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OF

PRECEDENTS,

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Drafts of Actual Practice;

FORMING A

SYSTEM OF CONVEYANCING;

WITH

DISSERTATIONS, AND PRACTICAL NOTES.

BY THE LATE

W. M. BYTHEWOOD, Esq.

AND

THOMAS JARMAN, Esq.

OF THE MIDDLE TEMPLE, BARRISTER AT LAW.

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By GEORGE SWEET, Esq.

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CONTENTS.

TABLE OF CASES - - - - xv

ANNUITIES.

PRELIMINARY DISSERTATION, 1—117.

PRECEDENTS.

1. *Agreement* to grant an *Annuity* for Life or Lives, secured on *Freeholds, Copyholds,* or *Leaseholds,* with or without a *Surety* - 118

2. *Assignment,* by Indorsement, of an *Annuity,* secured by *Covenant* and *Bond;* subject to repurchase - - - 123

3. *Assignment* of an *Annuity* charged on Lands, and *Bond;* and of *Term* to a *new Trustee;* or, *Declaration of Trust;* with or without the Grantor joining - - - - - 126

4. *Assignment* of *Annuity for Lives,* (secured by *Bond, Warrant of Attorney, Judgment,* and Covenant to surrender Copyholds; subject to repurchase;) by the Grantee, or by his *Executors* or *Administrators,* or by *Legatees,* or *Next of Kin,* with Assent; and where the Copyholds either have not been surrendered, or have been surrendered, and the Grantee admitted - - - 133

5. *Assignment* of *Annuity* charged on Grantor's *Life Interest in Stock;* and of Bond, Warrant of Attorney, and Judgment on which Execution has been entered up, and either with or without a Policy of Life Insurance; and Assignment to a new Trustee, or Declaration of Trust - - - - - - 146

6. *Assignment,* with the *Consent* of *Administratrix* de bonis non and her *Husband,* of a *Tontine Annuity,* for the Life of the Vendor's Wife, payable by *Trustees* out of an Estate in *Ireland* - - 152

7. *Assignment* of *Annuity,* charged upon the Interest of Stock, and upon a Reversion in Fee, and a *Policy of Life Insurance,* for the *Benefit of an Infant* Child of the Grantor, out of whose Money the same had been paid off, on Trusts declared by Deed of Even Date - 157

8. *Assignment* of *Annuity, Bond, Warrant of Attorney, Judgment,* and *Term,* on a *Repurchase,* to separate Trustees, *In trust for the Grantor;* by Indorsement or by another Deed - - - 163

9. *Assignment* of an *Annuity Term to merge* as to Part of the Lands; and *Assignment* of *Judgment* to a *Trustee,* to enable the Grantor to sell the whole of his Lands not remaining subject to the Annuity - 168

10. *Bond* to secure *Annuity* for *Grantor's Life; repurchasable* or not. 173

11. *Bond* to secure *Annuity* for Life of the Survivor of nominees; with or without *Warrant of Attorney; repurchasable* by one Payment, or *by Instalments* - - - - - - 175

12. *Bond* to secure *Annuity* for Life, with *Surety; repurchasable* by the *Grantor,* or *Surety* - - - - 178

13. *Bond* to secure *Annuity* for the *Obligor's Life,* to *Two,* as *Tenants in Common,* repurchasable or not - - - 181

14. *Bond* to secure *Annuity,* in *consideration* of *relinquishing a Business.* 183

15. *Bond* to secure *Annuity,* in consideration of Freeholds and Copyholds - - - - - - - 184

16. *Bond* to secure *Annuity;* collaterally secured by a *Grant* and *Demise,* and Warrant of Attorney; *repurchasable* after *Three Years* - 186

17. *Bond* to secure *Annuity;* collaterally secured by Covenants and Warrant of Attorney by *Sureties; repurchasable* by the *Grantor* or *Sureties* - - - - - 188

18. *Bond* to secure *Annuity* to *several,* as *Joint Tenants,* for Grantor's Life; collaterally secured by Indenture, and Warrants of Attorney for confessing Judgments in *England* and *Ireland;* repurchasable. (A short Form) - - - - - 191

19. *Bond* to secure *Annuity* during the Life of the Survivor of two; collaterally secured by *Bond, Warrant of Attorney,* and *Indenture,* and *repurchasable on replacing Stock* - - - 192

20. *Covenant* to pay *Annuity* collaterally secured by Bond, in consideration of *resigning* a *Business* - - - - 194

21. *Covenant* to pay *Annuity* for Grantor's Life, collaterally secured by Bond; to appear at Insurance Office, &c. *Defeazance on Judgment.* 196

22. *Covenant* by *Tenant for Life to surrender Copyholds,* to the Use of Grantee for ninety-nine Years; collaterally secured by Bond and Warrant of Attorney; usual Covenants, &c. *Defeazance on Judgment;* and Clause for *Repurchase,* with or without notice - 199

23. *Covenant* to *surrender Copyholds* on Fee, conditioned to secure Annuity for the Lives of Nominees; collaterally secured by Bond and Warrant of Attorney; *Trusts for Sale*, and *Investment* of Purchase-monies: *Defeazance on Judgment;* Proviso for Repurchase - 207

24. *Covenant* to pay *Annuity*, secured by previous *Surrender of Copyholds*, Bond and Warrant of Attorney - - - - 219

25. *Covenant* by Grantor of Annuity for Lives of Nominees, that he and his *Wife* will *surrender* her Copyholds in Fee, Upon *Trusts for Sale*, &c. - - - - - - 228

26. *Grant* of a *personal Annuity*, in which *Sureties* join; *Defeazance on Judgment;* and Power to *repurchase* - - - 231

27. *Grant* of *additional Annuity* for the Lives of Nominees, by Indorsement; charged on *Leaseholds* thereby assigned to Trustees; additional Power of Distress; Covenants for Insurance against Fire: Judgment to be of a Security for additional Annuity; Power to repurchase 235

28. *Grant*, by *Appointment and Release in Fee* to Uses, of Annuity for the Lives of Three Nominees, *Powers of Distress* and *Entry* by way of *Use; Trusts for Sale;* Defeazance on Judgment; Power to repurchase - - - - - - 241

29. *Grant* of *Annuity* by a *Widow* for her Life, or for Ninety-nine Years, determinable, *charged* on a *Moiety* of a *Freehold Estate*, by Appointment under a Power; *Powers of Distress and Entry;* Appointment and *Demise* of the Moiety, and Appointment and Assignment of *Life Interest in Stock*, to Trustee; Power to repurchase after the two Years; Defeazance on Judgment; Covenant as to Insurance; Covenant by Trustee to produce the Settlement, and permit Copies to be taken - - - - - - 253

30. *Grant* of *Annuity* charged on *Leaseholds: Power of Distress* by *Mortgagee* who is paid off, and Grantor; Assignment by Mortgagee and Grantor to Trustees, on Trusts, to secure Annuity out of the Rents, or by demise or sale, Covenant by the Grantor to enter into Covenants for Title with Purchasers and Mortgagees; to covenant to pay Mortgage Money and Interest; to give a Power of Sale to Mortgagees; to join in Sales, &c., to pay Rent and perform Covenants in Lease; to indemnify Trustees to insure against Fire: Defeazance on Judgment: Power to repurchase; Power to appoint New Trustees; [Variation where a Sum of Money is deposited in the hands of Trustees to pay a subsisting Mortgage debt.] - - 270

31. Grant of *Two Annuities* to Two Persons for the Grantor's Life, charged on Leaseholds demised by separate Leases: Assignment to Trustee, *Trusts for Sale of Mortgage;* Power to *repair*, and *insure;* Annuities to be paid *without priority:* Defeazance, &c. on *two Judgments:* Power to repurchase - - 288

32. Gran by *Assignment* of *Three Annuities* to a Trustee; the first being settled for *separateuse* of *Grantor's Wife*, she appoints the same under a Power; the second being settled on Husband and Wife; and the last being payable to the Wife if she survive her Husband, they assign both; upon trust, to pay Annuity £—— previously granted; and then to pay the Annuity now granted during *Wife's Life:* Defeazance to Warrant of Attorney: Husband or Wife may repurchase Annuity, or any part not less than a fifteenth, at a fixed Sum - - - - - - 302

33. *Grant* of *Annuity* for the Grantor's Life, charged on Parcels mentioned in a Schedule, and on Lands to be purchased with Trust Stock, both *belonging* to *Grantor*, under his Marriage Settlement for *Life*, in *Remainder* after a previous Life Estate: future Powers of Distress and Entry: Assignment to Trustee, of an Annuity charged on the same Property, and limited to Grantor for the joint Lives of himself and previous Tenant for Life; and of the Dividends of Trust Monies, to which Grantor is entitled for Life, in remainder after a previous Life Interest; and of Dividends of Grantor's Wife's Portion, secured to Trustees by a Bond and Demise from her Father, and to which Grantor is entitled in possession for Life: Demise to Trustee: Covenant to surrender Copyhold Parcels: Power of Mortgage or Sale: Covenants by Grantor to appear at Insurance Offices, &c., and to pay additional Premiums; not to consent to the Sale, &c. of Property; or to the Removal or Nomination of Trustees, without Grantee's Consent: other special Covenants; Power to repurchase on one Month's Notice - - - 314

34. *Grant* of *Annuity* for Sixty Years, if a Married Woman should so long live, secured by the *Grantor's Covenant*, and a *Charge* by the Married Woman on her *separate Life Estate* in Freehold Lands: Covenants as to Insurance on her Life: Power for either to repurchase - - - - - - 335

35. *Grant* of *Annuity*, for the Grantee's Life, by *Demise* of *Freeholds*, and *Covenant* to *surrender Copyholds* to Trustees; upon *Trusts for Sale, Mortgage*, &c., and further secured by Bond. The consideration being a Conveyance and Surrender of the Fee of the same Estates - - - - - 338

36. *Grant* of *Annuity* for Years, if Nominees should so long live; charged on Freeholds and Leaseholds: by Demise to a Trustee, Powers to demise, mortgage, sell, &c.; Covenant to insure against Fire: Power to repurchase; Defeazance on Judgment; Assignment of term to a Trustee *to attend* - - - - 348

37. *Grant* at *Common Law* of *Annuity* for Years, if Nominees should live; *Powers of Distress and Entry:* and Release in Fee; or by way

of *Use:* Trusts for Sale, &c.; Covenant to surrender *Copyholds*: *Power* to *cut Timber:* Declaration that the *Judgment shall affect* only the *Estates charged,* and the *Person* of *Grantor:* Appointment of *Receiver;* or, Covenant by *Mortgagees not* to *lend further sums* without consent; and Covenant by first *Mortgagee,* for *Production* of *Title Deeds* - - - - - 358

38. *Grant* of an *Annuity* by *Lessee* for *Years determinable* on Lives; or by *Tenant for Life: Underlease* - - - 370

39. *Grant,* by *successive Tenants for Life,* of *Two Annuities* to *Two Persons;* the First for the Life of the Survivor of Grantors; the other for the Life of one of them, secured by Bonds, and *Warrants of Attorney to confess Judgments in England and Antigua.* charged on a *Plantation in Antigua,* subject to a *Mortgage,* Agreement that *Mortgagee shall receive the Consignments,* and out of the Produce, after paying an annual Sum secured thereout, to the Grantors by the Bond of the Mortgagees, retain the residue in liquidation of Mortgage Debt: Demise to Trustee, Power to mortgage, sell, &c. No priority. Assignment to Trustee, of Mortgagees' Bond for paying a yearly Sum to the Grantors, Upon the same Trusts: Covenant by Grantors, to employ Mortgagees as Consignees, and in case of their Deaths, &c., to appoint others to be approved by Grantees; that new Consignees shall execute a similar Bond to that assigned; and that new Bond shall also be assigned to the Trustee. Covenant as to Insurance: Powers to repurchase: *Power of Attorney to acknowledge the Deed in Antigua,* in order for it to be registered, and to annex Schedules, describing the Lands - - - 376

40. *Memorial* of *Annuity,* to be inrolled - - - 437

41. *Release* of *Annuity* on *Repurchase* and *Assignment* of *Term* to *merge;* where the Repurchase Money is paid at the Time, or has been previously paid; or, *Assignment* to keep *Annuity* and *Term on Foot,* in Trust for Grantor; or, *Assignment* of *Part* of the Lands demised, and Assignment of the Judgment to enable the Grantor to sell Part of his Lands; or, *Re-assignment* of *Leaseholds,* or *Reconveyance* of *Freeholds* - - - - 437

42. *Surrender* of *Copyholds,* subject to a Condition to secure *Annuity,* where the Estate belongs to a *Married Woman,* or to a Customary Tenant in Fee, or for Life, and where it is taken by the Lord, or Steward, or Customary Tenants, and is done in Person or by Attorney; with Forms of *Exemplification* on the Court Rolls *of Trusts for Sale,* &c. - - - - - 443

43. *Warrant of Attorney* to confess Judgment, with or without a Bond, and with or without a Surety - - - 449

44. Defeazance to Warrant of Attorney - - - 451

45. *Affidavit* of the *Time of the Execution* of *Warrant* of *Attorney* 457

46. *Warrant of Attorney* to confess Judgment, by a *Surety*, for an Annuity granted [by a Clergyman], to Trustees for an Insurance Company; with Defeazance by reference - - - 459

47. *Warrant of Attorney* to confess Judgment in any of the *Colonies* 462

48. *Warrant of Attorney* to *acknowledge Satisfaction* on a Judgment, on Repurchase or Determination of the Annuity - - 463

49. *Warrant to enter Satisfaction* in the *Inrolment Office* - 464

50. *Warrant to vacate a conditional Surrender of Copyholds* - 465

51. *Satisfaction Piece* indorsed on a conditional *Surrender of Copyholds* - - - - - - 466

APPOINTMENT.

PRELIMINARY REMARKS, 467—504.

PRECEDENTS.

1. *Appointment* of a *Jointure*, and Term, before or after Marriage, under a Power - - - - - 505

2. *Appointment in Fee* of Part of the Premises included in a Power, subject to Life Estates of Appointor and Wife - - 513

3. *Appointment* by a *Widow*, under a Power, of a Moiety of a Moiety in an Equitable Estate in Lands, to one Child in Fee; and of the Remaining fourth to the other Five Children in Common in Fee; subject to Appointor's Life Estate; *Power* of general or partial *Revocation* - - - - - 514

4. *Appointment*, under *exclusive Power*, of *Copyholds* to Five Children in Common in Fee; Variations where an Appointment having been made to three by their Consent, a new Appointment is made to the Five - - - - - - 517

5. *Appointment* of *Leaseholds*, by Husband and Wife, under an *inclusive Power*, to three Children, to take effect after the Deaths of the Parents, in unequal shares: *Assignment* by the Administratrix with the will annexed of the surviving Trustee, and her Husband, to Two new Trustees - - - - 521

6. *Appointment* by a *Father and Son*, under a *Joint Power;* that on Son's Death, and Failure of his Issue Male in the Father's Lifetime, the Lands shall (subject to any Joint Appointment) be, to such Uses as the Father, surviving the Son, shall appoint - - 526

7. *Appointment* of a *Portion* for a Daughter, where there has or has not

been a previous Appointment; Authority to the Surviving Trustee of the Term, to raise the Portion by Mortgage forthwith: Provisoes as to further Appointments &c. - - - 530

8. *Appointment* by a *Married Woman* to her Husband, of One-Third of the Money arising from the Sale of Shipping and Fire Shares: and Release by the Husband and persons entitled to the Remaining Two-Thirds, to the surviving Trustee and the Representatives of the deceased Trustee, of all Demands in relation to the Trusts - 535

9. *Appointment* by *Husband and Wife*, of Money among *Seven Children*, unequally, some being married, others infant: Provisoes as to vesting, Survivorship, &c. - - - - - 539

10. *Appointment* of *Stock* amongst *younger Children* equally, subject to Life Interest of Appointor and Wife, with Provisoes as to partial *Survivorship;* Power of Revocation - - - 542

1. *Appointment* of a *Gamekeeper* - - - 547

2. *Deputation of Gamekeeper* to kill Game for the *use of himself* or of A. B. - - - - - 555

3. *Appointment* of *Gamekeeper* in *Wales* - - - 556

4. *Appointment* by the Owner or Occupier of a *Fishery*, of a Person to seize Nets, &c. - - - - - 557

5. *Lease* of *Manors* for the purpose of enabling the Lessee to depute *Gamekeepers* - - - - - 557

16. *Appointment* of a *Guardian* by an Infant - - 559

17. *A short Form* of an *Appointment* of *Guardian* - - 571

18. *Appointment* of *Guardians* by *several Infants*, with subsequent *Ratification* - - - - - 572

19. *Appointment* of *Receiver* by Demise, by Grantor of *Annuity* - 573

20. *Appointment* of *Receiver* by *two Mortgagors* and the *Mortgagee*, of Freeholds, or of *Freeholds and Copyholds;* the Freehold by Demise, the Copyhold by power of Attorney; Variations adapted to a *Mortgage under a power* - - - - 584

21. *Appointment* of *Receiver* by a *Mortgagor*, by way of *Power of Attorney*, Power to appoint *Deputy* - - - 595

22. *Appointment* of *Receiver* of *Rents and Tithes*, by power of Attorney, for securing *Interest* on a *Mortgage* and an *Annuity* - 601

23. *Appointment* of a *Receiver* of Freeholds and Leaseholds, by Trustees, under a *Power* in a *Voluntary Settlement*, at the request of the Tenant for Life; for paying *Interest* on a *Mortgage*, and on several Sums and also several Life Annuities, given by the Settlement - 606

24. *Appointment* of a *Steward* of a *Manor* or Manors - - 611

25. *Grant* of the *Stewardship* of Courts of *several Manors*, in some of which the Person appointing is *solely seised*, and in the others of *undivided Parts* - - - - - 613

26. *Appointment* of a *Deputy Steward* - - - 615

27. *Appointment* of a *Deputy Steward*, with a *Reddendum* - 616

28. *Appointment* of a *Deputy Steward*, for the Purpose of *admitting an Heir*, and *taking* a *Surrender* by way of *Mortgage*, or for taking Surrender from *Husband and Wife* to a Purchaser - - 617

29. *General Appointment* by *Devisees* in *Trust* of a *Solicitor* to the Offices of *Steward*, *Gamekeeper*, *Receiver*, and *Manager* of large Estates; Authority to *sell Timber*, to let and obtain Renewals: to appoint Deputies: Proviso for Poundage, Law Charges as Attorney, and for Surveying, &c., Salaries, &c., to Deputy Stewards, &c., for paying Annuities charged on the Estates; Repairs, &c. - - 618

30. *Appointment* of a *Protector* of a *Settlement* - - 624

For Testamentary Appointments under Powers, see WILLS.

For Appointments of New Trustees, see NOMINATION OF NEW TRUSTEES.

APPORTIONMENT.

1. *Apportionment of Rent* between *two Purchasers* of distinct Premises held under *one Lease*, by means of *Cross Covenants*, to pay apportioned Ground Rent, and *Increased Rent* for prohibited Trades; to perform Covenants &c. *Cross Powers of Distress* - - 628

ARBITRATION.

PRELIMINARY REMARKS, 633—672.

PRECEDENTS.

1. *Affidavit* of *Execution of a Submission* - - - 673

2. *Agreement* between *Vendor*, *Son*, and *Grandson*, and purchaser, *to refer* to One Arbitrator *all Disputes* existing, or to arise before the last Ten Days preceding the Arbitrator's first sitting - 674

3. *Agreement* to *refer* to *Three Arbitrators*, Matters of *Account* between a *Creditor* and *Two Debtors*, where the Dealings were between the Creditor and one of the Debtors to a certain Time, and from that Time between the Creditor and both Debtors; and where a balance is admitted to be due; to suspend Action, and Bills in Equity 676

4. *Appointment* of an *Umpire* by the *Arbitrators* - - 680

5. *Appointment* of a *Joint Arbitrator*, by Arbitrators - - 681

6. *Bond* of *Arbitration* from One to One - - - 681

7. *Bond* from *One* to *Two jointly and severally*, to abide by Award of Three Arbitrators, or any Two of them, or of their Umpire - 683

8. *Bond* to abide by the Award of Two Arbitrators; or of the Two and a Third, to be chosen by them, or of any Two of them; to produce all Deeds, &c. Suit in Chancery to be dismissed as to Costs in Suit to Compensation for Loss of Time and Expenses in endeavouring to sell certain Bonds; Accounts as to post obit Bond, to be opened by the Arbitrators; Purchase not to be impeached, but Errors rectified; Usual Powers - - - - - 685

9. *Bond* of Arbitration from *Five to One*, jointly and severally, as to Claims under Three Wills - - - - 688

10. *Bond* of Arbitration from the *Master of a Ship* to a *Merchant*, as to *Ransom* for *Ship and Cargo* - - - - 690

11. *Bond* of Arbitration as to Breaches of Husbandry Covenants - 692

12. *Covenant* for *Arbitration*, by *Executors* and *Legatees*, respecting the Estate and Effects of the Testator; adapted to a Reference by *Co-partners*, &c. - - - - - 696

13. *Covenant* for *Arbitration*, by *Several* with *Two*, under a Penalty 698

14. *Enlargement* of *Time* for making *Award* by *Arbitrators* - 699

15. *Enlargement* of *Time* by the *Parties* - - - 700

16. *Notice* to produce Papers, &c. - - - 701

17. *Warrant of Attorney* to confess Judgment - - 701

PRINCIPAL MATTERS DISCUSSED IN THE NOTES TO THE PRECEDENTS.

AGREEMENT to grant Annuity, 121, 122.
Assignment of Annuity, 123, 124.
Lease for a Year, 153.
Habendum, when informal, 170, 274.
Estates *pour autre vie* in Copyholds, 201.
Practice as to Copyhold Securities, 446.
Hereditaments, 235.
The word *that* in Covenants for Title, 264.

Trusts for Investment in Copyhold Securities, 277.
Destruction of Estates, &c., by cancelling Deeds, 285.
Errors in Recitals of Leases, &c., 288.
Trusts for Repayment of Consideration-Money for Annuity, whether Usurious, 295.
Covenant to pay Annuities, when Joint, 297.
Securities on a Wife's reversionary Choses, 308.
Copyholder's Right to fell Timber, 360.
Mode of appointing Receiver, 363, 574, 576, 578, 592, 595, 597.
Apportionment of Rents on Death of Lessor, Tenant in Fee, &c., 365.
As to Counsel and Solicitors in the Colonies, 380.
Execution of Colonial Deeds, 397.
Laws of the Colonies, 398—436.
Conveyance of Release of a Wife's Annuity, 437.
Stamps on Annuity Deeds, 442, 448, 462.
Practice as to Warrants of Attorney, 451, 454, 455, 457, 463.
Grant of Annuity by Clergyman, 459.
Jointures, 505.
Appointment in Fee, when authorised, 515.
Power may be given by Appointment, 526.
Law as to Game, Gamekeepers, and Fisheries, 547, 555.
Extinction of Manors, 551.
Who are Esquires, 553.
Guardianship, 559, 571.
Stewards of Manors, 611, 612, 615.
Protectorship of a Settlement, 626.
Arbitration, 680, 683, 689, 691, 694, 701.

TABLE OF CASES.

*** *The figures between parentheses denote the pages in which the cases are stated.*

ABBOTT *v.* Bruere (58)
Aberdeen *v.* Chitty, 68
Acherley *v.* Vernon, 18
Adams *v.* Adams, 495, 497
——— *v.* Bankert, 661
Agar *v.* Macklew, 634
Aguilar *v.* Aguilar, (117)
Aireton *v.* Davis, 451
Albany's Case, 474
Aldridge *v.* Harper, 636
Alexander *v.* Alexander, (500), (502), 504
Alsop *v.* Senior, 655
Altham's Case, 60
Amhurst *v.* Skinner, 109
Anderson *v.* Anderson, 469
——— *v.* Coxeter, 640
——— *v.* Dwyer, 64
———, *Ex parte*, (399)
Andrews *v.* Palmer, 663, 664
Angel *v.* Smith, 77, 78
Annandale, *Ex parte*, 51
Anon., (2 Barnard. 163), 643
——— (Dyer, 24; Roll. Ab. *Annuity*), 1
——— (3 Leon. 17), 25
——— (3 Leon. 53), 656
——— (11 Mod. 68), 360
——— (12 Mod. 560), 74
——— (1 Salk. 71, pl. 4), 637
——— (1 Salk. 153), 74
——— (Sir W. Jones, 388), 663
——— (3 Ves. 516), 69
——— (6 Ves. 287), 78
Ansell *v.* Evans, 640
Antrim (Marquis of) *v.* Duke of Buckingham, 468
Appleby *v.* Smith, 111
Appleton *v.* Doiley, 30
Archer *v.* Gardiner, 808
——— *v.* Hale, 636
Argoll *v.* Cheney, 285
Ashford *v.* Cafe, (499)
Aston *v.* Gwinnell, (86), (104), 105, (110)
Athelstone *v.* Moore, 649
Att.-Gen. *v.* Gee, 70
——— of Newfoundland *v.* Ryan, 435
——— *v.* Stewart, 398, (399), 406, 407
——— *v.* Vigor, 77
Attwood *v.* Taylor, 66
Atwaters *v.* Birt, 496
Aubin *v.* Daly, 13
Auriol *v.* Smith, 640
Austin, *In re*, 497
Aylett *v.* Ashton, 117
Ayliffe *v.* Murray, 72
Aylmer *v.* Aylmer, 64

BACKMAN *v.* Davis, (500)
Bacon *v.* Dubarry, 655
Badham *v.* Mee, 467
Bailey, *Ex parte*, 561
Bainbridge *v.* Bainbridge, (488)
Baker *v.* Townsend, 643
Baldwin *v.* Judge, 552
Ball *v.* Ball, 561
Bally *v.* Wells, 4
Bannatyne *v.* Leader, 659
Barber *v.* Barber, 451
——— *v.* Gamson, 91, 95, (96)
Barnard *v.* King, 667
Barrett *v.* Lousada, 423
Barry *v.* Rush, 657, 658
Bartlett *v.* Downes, 612
Baspole's Case, 649
Basspool *v.* Long, 223
Bates *v.* Cook, (665), 669
Bath and Wells (Bishop of) *v.* Hippesley, 655
Batten *v.* Earnley, 63
Bax *v.* Whitehead, (502), 503, 526

Bayley *v.* Bayley, 702
——— *v.* Warburton, 467, 468
Bearpark *v.* Hutchinson, (10), 11
Beaumont *v.* Barrett, 400
Beck *v.* Sargent, (669)
Becket's Case, 495
Beckford *v.* Wade, 420
Bedell *v.* Constable, 561
Bedford (Duke of) *v.* Coke, 63, 66
Bedwell *v.* Bedwell, 2
Belchier, *Ex parte*, 78
Bell *v.* Bilton, (53)
Bendloss *v.* Phillips, 17
Bennet *v.* Pope, 470
Bennett *v.* Davis, 469, 470
Benson *v.* Scott, 223, 224
Berney *v.* Sewell, 75
Berrington *v.* Evans, 68
Berry *v.* Bentley, 94
Bertie *v.* Lord Abingdon, 68
Bevil's Case, 24, 25
Biddell *v.* Dowse, (654), 655, 662, 663
Bignal *v.* Brereton, 63
Birch *v.* Wright, 49, 224
Bird *v.* Higginson, 548
Blackett *v.* Lowes, 360
Blake *v.* Attersoll, (107), 116
——— *v.* Marnell, 491
Blankard *v.* Galdy, 399
Blithe's Case, 468
Blockhill *v.* Ascot, 487
Blundell *v.* Brettargh, 636, (662)
Blunt *v.* Clitherow, 78
——— *v.* Grimes, 553
Boddington *v.* Abernethy, 469
Bodvell *v.* Bodvell, 7
Bogue, *Ex parte, re* Basan, 51, 104
Bolton *v.* Bolton, 496
——— *v.* Carlisle (Bishop of), 153, 285
——— *v.* Williams, 117
Bonithon *v.* Hockmore, 71
Bonner *v.* Charlton, (637)
Bonnington *v.* Wanthall, 58
Booth *v.* Leycester, (64)
Boscawen *v.* Cook, 9
Bowyer *v.* Blorkside, 655
Boyd *v.* Emmerson, 661
Bradbury *v.* Wright, 39
Braddick *v.* Thompson, 648
Bradford *v.* Byan, 672
Bradshaw *v.* Lawson, 551
Braithwaite *v.* Cooksey, 30
Bramhall *v.* Hall, 468
Brandon *v.* Brandon, 77
Brazier *v.* Bryant, 638
Brediman's Case, 21
Bright *v.* Durnell, 661
Bristow *v.* Binns, (655)
——— *v.* Warde, 503
Brocklis, *Ex parte*, 2
Broden *v.* Pierce, (33)
Bromley *v.* Holland, 111, 112, 114, (115)
Brooks *v.* Greathead, 77
Broomhead *v.* Eyre, 104
Browes *v.* Bruce, 637
Brown's Case, 222
Brown *v.* Claxton, 2
——— *v.* Dyer, 222
——— *v.* Goodman, (646), 694
——— *v.* Tanner, 664
——— *v.* Vawser, 680
Browne *v.* Lee, (55), (86)
——— *v.* Like, 110
——— *v.* Meverell, (656)
——— *v.* Pendlebury, 17
——— *v.* Rose, 87
Brudenell *v.* Elwes, 495, 504
Bryan *v.* Cormick, 75
Buckeridge *v.* Flight, 85, 86, 87, 94
——— *v.* Ingram, 12
Buckle *v.* Roach, 652
Buller's Case, 76
——— *v.* Burt, 479, 480, 486
Bullpin *v.* Clarke, 25, 117
Burdon *v.* Browning, 112
Burgess *v.* Wheate, 220
Burgoine *v.* Spurling, 224
Burn *v.* Burn, 661
Burnet *v.* Mann, 467, 469
Burrell *v.* Jones, 655
Burton *v.* Kirkby, 462
——— *v.* Pierpont, 468
Bush *v.* Green, 551, 553
Bushell *v.* Bushell, (488)
Butcher *v.* Butcher, (502), (503)
Butt's Case, 12, 13, 40, 41, 438
Buttery *v.* Robinson, 42
Byne *v.* Potter, 111, (114)
——— *v.* Vivian, 111, (114)

CAGE *v.* Acton, 60
Calton *v.* Porter, (102), 103
Calvin's Case, 399
Campbell *v.* Hale, 398
——— *v.* Leach, 491
Cane *v.* Chapman, 3
——— *v.* Lovelace, (86), (92), (95)
Cannor *v.* Turner, (36)
Capel *v.* Butler, (86)
Cardigan (Earl of) *v.* Montague, 495
Carew *v.* Johnston, (73)
Carey *v.* Askew, 488
Carill *v.* Cuddington, 560
Carter *v.* Barnardiston, 74
——— *v.* Carter, 487, 649
——— *v.* Murcot, 555
Casborne *v.* Barsham, 661
Case *v.* Dere, (667)
Cashborn *v.* English, 470
Cassel, *In re*, 671
Casson *v.* Dade, 487
Cavendish *v.* ———, 655
Cawling *v.* Parrett, 468
Cawthorn *v.* Holben, 456
Chambers *v.* Goldwin, 70, 72
Champernown *v.* Scott, 612
Champneys *v.* St. John, (112)
Chaplin *v.* Chaplin, 8, 9
Charnley *v.* Winstanley, 663, 664
Charretie *v.* Vause, (110)

Cheek *v.* Jefferies, (89)
Cheslyn *v.* Dalby, 635
Chester, *Ex parte*, 111
Chester's (Lady) Case, 561
Chetwode *v.* Crew, 551
Chichester *v.* M'Intyre, 636
Chomeley *v.* Paxton, (489)
Chudleigh's Case, 8
Clarke *v.* Crofts, (662)
——— *v.* Seymour, (499)
——— *v.* Stocken, 661
Cleere's (Sir Edward) Case, 491
Clench *v.* Cudmore, (562)
Cockerell *v.* Chomeley, (489)
Cocks *v.* Harman, 612
Codrington *v.* Johnstone, (75)
Colcraft *v.* Gibbs, 554
Cole *v.* Gardner, (106)
——— *v.* Perkins, 479
——— *v.* Wade, 498
Coleman *v.* Seymour, 498
Collins *v.* Collins, 55
——— *v.* Goodall, 58
——— *v.* Lightfoot, 57
Colton *v.* Hoskins, 470
Colwell *v.* Child, 654
Cook *v.* Herle, 9
Cooke *v.* Tower, (97)
Cooper *v.* Johnson, 662
Cooth *v.* Jackson, 636
Corpus Christi College, *Ex parte*, 612
Court *v.* Harris, 68
Couts *v.* Phillips, (91), 97
Coventry *v.* Champneys, (98)
Cowell *v.* Waller, 668
Cowgill *v.* Lord Oxmantown, 500
Cowley *v.* Bussel, (57)
Cowper *v.* Godmond, 113, (114)
Cox *v.* Chamberlain, 491
Coxe *v.* Day, (499)
Crawshay *v.* Collins, 637, 662
Crespigny *v.* Wittenoor, 106
Creuze *v.* Hunter, (63)
———*v.* Lowth, (63)
Cromwell's Case, 26
Crowther *v.* Wentworth, (86)
Cudliffe *v.* Walters, 664, 668
Cughill *v.* Fitzgerald, 655
Cumberland *v.* Kelly, (107)
Cumming *v.* Forrester, 400
Cupit *v.* Jackson, 2, 31, (49), 50, 58
Curteis *v.* Kenrick, (485), 469
Curtis *v.* Barclay, 654
——— *v.* Potts, 664
Cutting *v.* Derby, 366

DACRE'S Case, 615, 617
Dalby *v.* Cheslyn, 662
——— *v.* Pullen, (498)
Dalmer *v.* Dashwood, 75
Daly *v.* Kelly, 406
Danby *v.* Conyers, 8
Dancer *v.* Hastings, 77
Dane *v.* Monsey, 668
Daniel *v.* Upley or Upton, 468, 469, 515
Darbyshire *v.* Cannon, 638
Darlington (Earl of) *v.* Pulteney, (488)
Dartnell *v.* Marquis Wellesley, (96)
Darwin *v.* Lincoln, (87), (109)
Davie *v.* Beversham, *or* Beardsham, 221
Davila *v.* Almanza, 638
Davis *v.* Bryan, 115
——— *v.* Dendy, 71, (73)
——— *v.* Duke of Marlborough, 68, 342
——— *v.* Gardner, (106)
——— *v.* Page, 655
Dawes *v.* Painter, 400
Dawson *v.* Sadler, 640
Day *v.* Croft, (71)
Deeks *v.* Strutt, 21
Delves, *Re*, 51
Denn *d.* Joddrell *v.* Johnson, (361)
——— *v.* Roake, 491
Denne *v.* Dupuis, 111
Dennett *v.* Pass, 60
Deschamps *v.* Vanneck, 65
Digge's Case, 59, 473, 474, (477), 495, 497, 520
Dillon *v.* Grace, 468
Dixon *v.* Harrison, 37
——— *v.* Olmius, 469
Dodd *v.* Herbert, 680
——— *v.* Herring, 663
Doe *d.* Lewis *v.* Bingham, 115
——— *d.* Fox *v.* Bromley, 90
——— *d.* Spilsbury *v.* Burdett, (479), 480, 486
——— *d.* Taylor *v.* Crisp, 222
——— *v.* Ford, 109
——— *d.* Wheeler *v.* Gibbons, (221)
——— *d.* Nepean *v.* Goddard, (201)
——— *d.* Worger *v.* Haddon, 494
——— *d.* Beck *v.* Heakin, 551
——— *d.* Hickman *v.* Hickman, 495
——— *d.* Delegal *v.* Holloway, 488
——— *d.* Biass *v.* Horsley, (46)
——— *d.* Daniel *v.* Keir, 480, 491
——— *v.* Langton, 553
——— *d.* Winder *v.* Lawes, 221, 222
——— *d.* Lempriere *v.* Martin, 201
——— *d.* Stilwell *v.* Mellersh, 611
——— *d.* Carlisle *v.* Morpeth, 648
——— *d.* Mansfield *v.* Peach, 478, (479)
——— *d.* Hotchkiss *v.* Pearce, 478, (484)
——— *d.* Johnstone *v.* Phillips, (107)
——— *d.* Mason *v.* Phillips, 95
——— *d.* Chapeau *v.* Reynolds, (449)
——— *v.* Robinson, (14), 15
——— *d.* Greville *v.* Roper, 702
——— *d.* Morris *v.* Roper, 702
——— *d.* Foster *v.* Scott, (201)
——— *d.* Hodsden *v.* Staple, 468
——— *d.* Burgess *v.* Thompson, 611
——— *v.* Tofield, 221, 222

Doe *d.* Calkin *v.* Tomkinson, (499)
—— *d.* Povey *v.* Wilson, 222
—— *d.* Vernon *v.* Vernon, (221)
—— *v.* Whittington, 462
—— *v.* Wroot, 220
Donovan *v.* Mascal, 665
Douglas *v.* Cooper, (489)
Downes *v.* Timperon, 469
Dowse *v.* Coxe, (654), 655, 662
Doyley *v.* Pitslow, 668, 669
Drake *v.* Rogers, (94), 100, 114
Drapers' Company *v.* Davis, (63)
Driver *d.* Berry *v.* Thompson, 469
Dubois *v.* Medlycott, 640
Duff *v.* Dalzell, 487, 488
Dunn *v.* Calcroft, (115)
—— *v.* Murray, 649
Dupper *v.* Mayo, 366
Dutton *v.* Howell, 399
Dyke *v.* Sylvester, (503)

EARLE *v.* Browne, (110)
—— *v.* Stocker, 637
Edmunds *v.* Cox, 662, (663)
Edridge's Case, 30, 31
Edwards *v.* Edwards, 488
Eldridge *v.* Knott, (58)
Elliott *v.* Remmington, 308
—— *v.* Cheval, (667)
Ellis *v.* Smith, 487
Ellitson *v.* Cummins, (658)
Emery *v.* Wase, 636, 656
Evans *v.* Senor, (648)
—— *v.* Thomson, (645), 647, 694
Evelyn *v.* Forster, 399
Ewer *v.* Jones, 20, 21

FAIRCLOTH *v.* Gurney, (91)
Fairfax *v.* Gray, (39)
Fairfield *v.* Weston, 342
Fairman *Re* Lloyd, 51, 91
Fallon, *Ex parte*, 85, 96
Farley *v.* Briant, 23
Farmer *v.* Bradford, 491
Fawkner *v.* Bellingham, 25
Ferrers *v.* Ferrers, 63
Few *v.* Backhouse, 94
Field *v.* Sowle, 117
Filmer *v.* Delber, 648, 652
Finch's Case, 26, 42, 551, 552
Finch *v.* Winchelsea (Earl of), 470
Finley *v.* Gardner, (106)
Fish *v.* Butt, 40
Fisher, *Ex parte*, 51, 55
—— *v.* Plimbley, 649
Fitzwater's Case, 555
Fletcher *v.* Dodd, 74
Flight *v.* Buckeridge, 85, 86
—— *v.* Lake, (94)
Ford *v.* Jones, 671
Forster's Case, 25
Forster *v.* Brunetti, 638
—— *v.* Jackson, 2
Forster *v.* Wandlass, 45
Fountain *v.* Gnales, 31
Fowell *v.* Forrest, 646
Fowler *v.* North, 496
Frederick *v.* Frederick, 560
Freeman *v.* Burgess, 57
French *v.* Baron, 70
Frost *v.* Frost, (108)
Fulwood *v.* Ward, 2, 4, 61
Furnival *v.* Bogle, 652
Fussell *v.* Silcox, 648
Fyall *v.* Varier, (665)

GARDINER *v.* Fell, 400
Garland *v.* Carlisle, 66
—— *v.* Garland, 69
—— *v.* Noble, 649
Garratt *v.* Taylor, 67
Garrett *v.* Lister, 481
Garthwaite *v.* Robinson, (501)
Gaunt *v.* Taylor, (65)
Gay *v.* Cox, 63
Genne *v.* Tinker, 651
George *v.* Evans, 68
Gerard *v.* Boden, 6
Gibbons *v.* Mainwaring, 75
—— *v.* Moulton, 467, 468
Gibbs *v.* Hooper, (87), 95
Gibson *v.* Kinvin, (501)
Gifford *v.* Manley, 647
Gill *v.* Russell, 655
Gilliatt *v.* Gilliatt, 561
Gillow *v.* Lillie, 106
Girdlestone *v.* Allan, 97
Glasscocke *v.* Peche, 360
Glover *v.* Lane, 551
Goddard's Case, 481
Godfrey *v.* Wade, 640, 655
—— *v.* Watson, (73)
Goffe *v.* Elkin, 406
Goldsmid *v.* Goldsmid, 498
Gorton *v.* Falkner, 32
Gosley *v.* Gilford, 13
Gough *v.* Hayward, 42, 43
Gould *v.* Fleetwood, 72
Grange *v.* Tiving, 470
Grazebrook *v.* Davis, 664
Greatly *v.* Noble, 117
Greenham *v.* Gibbeson, (500)
Greenhill *v.* Church, 637
Greenwood, *In re*, 672
Grey *v.* Northumberland (Duke of), 361
Greig *v.* Talbot, (646)
Griffith *v.* Griffith, 76
Grimstone *v.* Bell, (648)
Grubb, *Ex parte*, 612
Guilliams *v.* Munington, 38
Gwinnet *v.* Bannister, 640
Gwynne *v.* Heaton, 116

HAGGET *v.* Welsh, 664
Haies *v.* Haies, 651

Haigh *v.* Grattan, 74
Halden *v.* Glasscock, 646
Hales *v.* Taylor, 640
Halfhide *v.* Fenning, 634
Hall *v.* Campbell, 399
——*v.* Ellis, 643
——*v.* Lawrence, 669
——*v.* Rowse, 637
——*v.* Wingfield, 473
Hallett *v.* Mountstephen, 636
Hammond *v.* Foster, 110
Hannan *v.* Morgan, 223
Hanvell *v.* Thorogood, 663
Harcourt *v.* Ramsbottom, 664
Harding *v.* Watts, (665), (670)
Hare *v.* Ogle, 106
Harper *v.* Abrahams, 637, 679
Harris *v.* Graham, 468, 498
———*v.* Joy, 611
———*v.* Mitchell, 670
Harrison *v.* Boydell, 74
———*v.* Douglas, (636)
———*v.* Grundy, (643)
Hart *v.* Lovelace, 87
Harvey *v.* Harvey, 468
Harwell *v.* Barwell, 32
Hassell *v.* Gowthwaite, (49)
Hastings' Case, 495
Haswell *v.* Thorogood, 663
Hatcher *v.* Curtis, 496
Havergill *v.* Hare, 47, 48
Hawkins *v.* Kemp, (471), 472, 473, 474, 475, 476, (477), 478, 479
Hay *v.* Palmer, 61
Hayes *v.* Hayes, 651
Hayward *v.* Phillips, 637
Hearle *v.* Greenbank, 468, 470
Heatley *v.* Thomas, 117
Hele *v.* Bond, 495, 496
Henley *v.* Soper, (654)
Henn *v.* Hanson, 59
Henry *v.* Taylor, (106)
Hervey *v.* Hervey, 506
Hewitt *v.* Penney, 670
———*v.* Lord Dacre, 504
Hick, *In re*, 646, 664
Hickes *v.* Cracknell, 109
Hicks *v.* Richardson, (651)
——*v.* Hicks, 113
Hill *v.* M. & W. Waterworks Company, 111
Hinne *v.* Rundell, 489
Hinton *v.* Hinton, 470
Hocken *v.* Brown, (58)
Hodsden *v.* Lloyd, 489
Hodson, *In re*, 672
Hoe's Case, 60
Hoffman *v.* Cooke, 111, 112, (116)
Holcroft's Case, 611
Holderness *v.* Carmarthen, 12
Holdfast *d.* Wollams *v.* Clapham, 224
Hole *v.* Escott, 499
Holland *v.* Berks, 638
——*v.* Pelham, 93
Holmes *v.* Bell, 68, 75
Hone *v.* Morgan, 53
Honner *v.* Morton, 308
Hood *v.* Burlton, 110
Hoole *v.* Bell, 27
Hopecroft *v.* Hickman, 636
Hopkins *v.* Myall, 477
Horlock *v.* Priestley, 224
Hornsby *v.* Lee, 308
Horseman *v.* Abbey, (469)
Hougham *v.* Sandys, 480, 481
Howard *v.* Wood, 552, 612
Howell *v.* Hanforth, 61
Hudson's Case, 285
Hughes, *Ex parte*, 655
———*v.* Hughes, 76
———*v.* Mayre, 612
Hull *v.* Sharbrook, 224
Hulme *v.* Tenant, 117
Hulton *v.* Lewis, 106
———*v.* Sandys, (91)
———*v.* Simpson, 488
Hunt *v.* Winchelsea, (490)
Hurd *v.* Girdlestone, 104, 105
Hutchins *v.* Hutchins, 640
Hutchinson *v.* Lord Massareene, 74
———*v.* Morritt, 550
Hutt, *Ex parte*, 613
Hyde's Case, 474
Hyde *v.* Price, (66), 67

ILCHESTER (Earl of), *Ex parte*, 561
Ince *v.* Everard, 94, 95
Ingram *v.* Bray, 59
Irwin *v.* Farrar, (489)
Iveson *v.* Carrington, 654

JAMES, *Ex parte*, 55
———*v.* Attwood, 661
———*v.* James, 107
Jameson, *In re*, 672
Jarrold *v.* Rowe, 68
Jemott *v.* Cowley, 48
Jenkin *v.* Pearce, 153
Jenkins *v.* Briant, (23), 75
———*v.* Law, 643, 644, 645
———*v.* Milford, (49), 70
Jennings *v.* Vandeputt, 665
Jennyx *v.* Applefourth, 2
Jephson *v.* Riera, 400
Jermin *v.* Orchard, 202
Johnes *v.* Claughton, 77
Johnson *v.* Wilson, 650
Johnston *v.* Compton, 52
Jolland *v.* ———, 69, 74
Jones *v.* Clough, 487
——*v.* Dale, 477, 478
——*v.* Harris, 117
——*v.* Jones, 30
——*v.* Lady Manchester, 496
——*v.* Silberschildt, (104)
——*v.* Smart, 553

Jones *v.* Winwood, 467
——— *v.* Yates, 660
Joseph, *Re*, *v.* Webster, 641, 658
Juxon *v.* Brian, 74

KEATS *v.* Hick, 107
Keibbet *v.* Lee, 491
Kelfe *v.* Ambrosse, (96)
Kelly *v.* Chubbe, (22)
Kemp *v.* Cruwes, (22)
——— *v.* Kemp, (501), (502), 503, 504
Kemshead, *Ex parte*, 663
Kenebet *v.* Scrafton, 220
Kensington *v.* Mansell, 446
Kent's Case, 40
Kent (Earl of) *v.* Steward, (47)
Keys *v.* Keys, 78
Kill *v.* Hollister, 634
Kimp *v.* Cruwes, 33
King *v.* Turner, 221, 222
Kirkus *v.* Hodgson, 637
Kite *v.* Queinton, 224
Knight *v.* Plymouth (Lord), 78
——— *v.* Stone, 655
Knox *v.* Simmonds, 641

LANE *v.* Drinkwater, (297)
Langley *v.* Brown, (491)
——— *v.* Sneyd, (490)
Langstaffe *v.* Fenwick, 73
Larkins *v.* Larkins, 400
Laurence *v.* Wallis, 496
Lawrence *v.* Hodgson, 646, 664
Lecone *v.* Sheires, 561
Lee and Hemingway, *Re*, 639
—— *v.* Vincent, 500
Leech *v.* Leech, 285
Leeds (Duke of) *v.* Corporation of New Radnor, (50)
Le Fleming *v.* Simpson, 360
Legatt *v.* Shewell, (63)
Legget *v.* Finlay, 646
Leicester's Case, 472, 491
Leith *v.* Irvine, 70
Lemaine *v.* Staneley, 487
Lempriere *v.* Valpy, 485, 486
Levy *v.* Langridge, 66
Lewis, *Ex parte*, 91, 111
——— *v.* Hooper, (91), 111
——— *v.* Lane, 221
——— *v.* Morgan, 68
Lidster *v.* Borrow, 549
Liefe *v.* Saltingstone, 500, 515
Lilley *v.* Hedges, 651
Lillington's Case, 475
Lindon *v.* Collins, 25
Lisle *v.* Lisle, 496
Littler *v.* Holland, 646
Litton *v.* Litton, 33
Locke, *In re*, 2, 121
Long *v.* Buckeridge, 25, 26
Longford *v.* Eyre, 487
Love *v.* Honeybourne, 657
Lucas *v.* Fulwood, (17)
——— *v.* Wilson, 638, 640
Lumley *v.* Hutton, 656, (658)
Lyall *v.* Lamb, 639
Lyde *v.* Mynn, (55)
Lynn *v.* Ashton, (489)
Lyons (Mayor of) *v.* East India Company, 400
Lysaght *v.* Royle, 504

MABER *v.* Hobbs, 104
M'Adam *v.* Logan, 477, 499
Macey *v.* Shurmer, 500
Machel and Dunton's Case, 19
Mackinlay *v.* Sison, (486)
M'Dougall *v.* Robertson, (662)
M'Queen *v.* Farquhar, (478), 480
Maffey *v.* Godwin, 662
Magennis *v.* Maculloch, 285
Major *v.* Lawley, 117, 469
Malcolm *v.* Fullarton, 637
——— *v.* O'Callaghan, 77, 78
Malin *v.* Keighley, 500
Mallock *v.* Eastly, 553, 554
Mansell *v.* Burridge, 750
March *v.* Bulteel, 664
——— *v.* Wood, 663
Mardiner *v.* Elliott, 361
Marks, *Ex parte*, *re* Colnaghi, 51, 54
Marlborough (Duke of) *v.* Godolphin, 474, 487, 490
Marr *v.* Littlewood, 68
Marshall *v.* Holloway, 69
Massey *v.* Nanney, (108)
Matson *v.* Trower, 646
Mattey *v.* Godwin, 636
Mattock *v.* Kinglake, 62
Maund's Case, 6, 38, 45
Maundrell *v.* Maundrell, 490, 491
Mellish *v*, Mellish, 64
Mence *v.* Graves, 57
——— *v.* Hammond, 97, 112
Mendes *v.* Mendes, 560
Menzey *v.* Walker, 501
Messor *v.* Molyneux, 553
Mestayer *v.* Biggs, (108), 109, 111
Metcalf *v.* Bowes, *or* Lord Strathmore, 89, 90
——— *v.* York (Archbishop of), 68
Middleton *v.* Weeks, 672
Miller *v.* Robe, 691
Mills *v.* Auriol, 23, 24
——— *v.* ———, 640
Milnes *v.* Branch, 23
——— *v.* Gery, 636
Mingie's Case, (61)
Mitchell, *Ex parte*, 109
——— *v.* Harris, 634, (666), 668, 684
Mocatta *v.* Lonsada, (502), 503
Mole *v.* Smith, 652
Moodie *v.* Reed, 478, 480, (484), 486

Moore *v.* Bowmaker, 636
Mootham *v.* How, (106)
Morant *v.* Gough, (23)
Mordaunt (Lord) *v.* Earl of Peterborough, 500
Morgan *v.* Evans, (66)
——— *v.* Morgan, 63
Morison *v.* Morison, 69
Morris *v.* Dillingham, 63
——— *v.* Jones, (92), 454
——— *v.* Prince, 43
——— *v.* Reynolds, 637
Morse *v.* Faulkener, 222
——— *v.* Sury, 649
Mott, *In re*, (52)
Mountjoy's Case, 338
Mouys *v.* Leake, (103), 105
Murray *v.* Barlee, 117
Myers, *Ex parte*, 54

NAIL *v.* Punter, 117
Naldred *v.* Gilham, 496
Nantes *v.* Corrock, 117
Nash, *In re*, (93)
——— *v.* Godmond, 95
Neale *v.* Ledger, (671)
Nerot *v.* Wallace, 659
Newgate *v.* Degelder, 664
Newlands *v.* Holmes, 469
Newman *v.* Auling, 63
——— *v.* Moore, 32
Nicholl *v.* Bromley, 455
Nicholls *v.* Roe, 640
Nield *v.* Smith, 2, 121
Norris *v.* Harrison, 366
Northumberland (Duke of) *v.* Errington, 650
——— *v.* Wheeler, 360
Norton *v.* Turrill, 117

O'DONNELL *v.* Browne, 63
Ogilvie *v.* Foley, 66
Ognel's Case, 18, 19, 27, 29, 37
Oliver *v.* Collings, 670
——— *v.* Woodroffe, 560
Orphan Board *v.* Van Reenen, 662
Oxford (Corporation of) *v.* Richardson, 555
Orton *v.* Knight, 87
Oxford (Bishop of) *v.* Leighton, 496
Owen *v.* Dickinson, 117

PAGE *v.* Bussell, (57)
Palmer *v.* Stabick, (31)
——— *v.* Stanage, 31
Parker *v.* Brooke, 469
——— *v.* Calcraft, 75
——— *v.* Kett, 490, 615
Parkhurst *v.* Smith, 48
Parratt, *Ex parte*, 51
Parsons *v.* Parsons, 498
Parton, *Ex parte*, 53
Pattison *v.* Banks, 55
Paul *v.* Hewitson, (489)
Paull *v.* Paull, 652
Peachey *v.* Duke of Somerset, 220
Peacock *v.* Monk, (468)
Pearman *v.* Carter, 648
Pearse *v.* Cameron, 637
Pearson *v.* Henry, 657
Pedley *v.* Goddard, 640
——— *v.* Westmacott, (643)
Peeres *v.* Bishop, 285
Pelton *v.* Darby, 17
Perry *v.* Bowas, 474
Perryman's Case, 473
Petrie *v.* Bury, 297
Phillips *v.* Const, 90
——— *v.* Crawford, (103)
——— *v.* Phillips, (14), (221), 224
——— *v.* Phipps, 497
Phipps *v.* Ingram, 661
Pickard *v.* Roberts, 308
Piercey *v.* Roberts, 660
Pierson *v.* Sorrell, 46
Piper *v.* Piper, (497)
Pitt *v.* Snowden, 76, 364
Pocklington *v.* Bayne, 500, 504
Pool *v.* Duncomb, 30
—— *v.* Neel, (29)
Poole *v.* Cabanes, (94), 114
Pope *v.* Lord Duncannon, 664
Potts *v.* Leighton, 72, 74
—— *v.* Ward, 662
Poulson *v.* Wellington, 487
Powell *v.* Killick, 30
——— *v.* Peacock, 360
——— *v.* Phillips, (643)
Power *v.* Bennis, 63
Pownall *v.* King, 641
Prentice *v.* Reid, 637
Prescott *v.* Boucher, 30
Price, *Ex parte*, (51), 110
Prichard *v.* Ames, 469
——— *v.* Ovey, 122
Purdew *v.* Jackson, 308
Purslow *v.* Bailey, 657

QUADRING *v.* Downs, 560
Quarrell *v.* Beckford, 75

RANCE *v.* Farmer, 649
Randall *v.* Rigby, (22)
Rawles *v.* Mason, 360
Rawlinson *v.* Duchess of Montague, 12
Rawtree *v.* King, 648
Reade *v.* Dutton, 664
Reeve *v.* Attorney-General, 62
Reid *v.* Shergold, 489
Reresby *v.* Newland, 498
Rex *v.* Addington, 652
—— *v.* Bardell, 642
—— *v.* Bingham, (646), 663

Rex *v.* Brewers' Company, 221
——— *v.* Brough, 553
——— *v.* Chester (Bishop of), 552
——— *v.* Dilliston, 223
——— *v.* Greenhill, 561
——— *v.* Haverton, 551, 552
——— *v.* Hendon (Lord of the Manor of), 221, (222)
——— *v.* Hill, 646, (653)
——— *v.* Jolly, 561
——— *v.* Justices of Northampton, 661
——— *v.* Lucas, 613
——— *v.* Price, 639
——— *v.* Sherrington, 560
——— *v.* Shillibeer, 642
——— *v.* Stafford (Marquis of), 515
——— *v.* Sutton, 560
——— *v.* Teddington, 559
——— *v.* Tower, 360
——— *v.* Vaughan, 398, 399, 400
——— *v.* Wharton, 555
Reynolds *v.* Grey, 665, (670)
Rhodes *v.* Haigh, 662
Rich *v.* Cockell, 489
Richards *v.* Chambers, 308
——— *v.* Perkins, 68
Richardson *v.* Tomkins, 95
Rickman *v.* Garth, 4
Riddell *v.* Sutton, 657, 658
Ridout *v.* Pye, 669
Rigge *v* Bowater, 75
Right *d* Taylor *v.* Banks, (221)
Ripley *v.* Waterworth, 202
Rippon *v.* Dowding, 468
Rivett *v.* Godson, 8
Roach *v.* Garvan, 561
——— *v.* Wadham, (491), (493)
Roake *v.* Huggins, 360
Roberts *v.* Mariatt, 649
——— *v.* Newbolds, 655
Robinson *v.* Cumming, 63, (65)
Robson *v.* ———, 657, 660
Rockey *v.* Huggins, 360
Rockingham *v.* Oxenden, 366
Roe *d.* Berkeley (E. of) *v.* Archb. of York, 285, 491
——— *d.* Buxton *v.* Dunt, 501
——— *d.* Cosh *v.* Loveless, 224
——— *v.* Doe, (668)
——— *v.* Hicks, 224
Rogers *v.* Dallimore, 640
——— *v.* Jones, 613
Rolfe *v.* Budder, 469
Rolls *v.* Mason, 360
Roscommon (Earl of) *v.* Fowkes, 469, 488
Ross *v.* Ewer, 477, 488, 627
Routledge *v.* Thornton, 680
Rowe *v.* Wood, 68, 75
Rowles *v.* Masters, 360
Rowth *v.* Howell, 78
Rudston *v.* Yates, 655
Rumsey *v.* Walton, 551
Rutter *v.* Rutter, 560
SACCUM *v.* Norton, 663
Sackett *v.* Owen, 648
Saffery *v.* Elgood, 32, 34, 36, 41
St. Auby's Case, 12
St. John *v.* Champneys, 87
Salway *v.* Salway, 78, (79)
Sanders *v.* Franks, (487), 495
Sandilands *v.* Marsh, (115)
Saunders *v.* Owen, 372
Saunderson *v.* Jackson, 487
Savery *v.* Dyer, 12, 13
Saward *v.* Austey, 42
Saxe, *Ex parte*, 51
Sayle *v.* Freeland, 487
Sclater *v.* Travell, 468, 498, 499
Scott *v.* Brest, 70
Seaman *v.* Duill, 308
Seddon *v.* Tutop, 649
Shaftesbury's Case, 561
Shaftesbury (Earl of) *v.* Lady Harmer, 561
Shardelow *v.* Naylor, 489
Sharp *v.* Carter, 77
——— *v.* Pool, 29
Shaw, *Ex parte*, 112, 115
——— *v.* Evans, 451
——— *v.* Rhodes, 74
Sheddon *v.* Goodrich, 399, 429
Shelley's Case, 473, (475)
Shewell *v.* Jones, 74
Shove *v.* Webb, (116)
Simeon *v.* Simeon, (478), 485, 487
Skinner's Company *v.* Irish Society, 68
Skip *v.* Harwood, 68
Slack, *Ex parte*, 55, (56)
Smailes *v.* Wright, (666), 668
Smartle *v.* Penhallow, 201
Smith *v.* Fielden, 662, 664
——— *v.* Johnson, 619
——— *v.* Muller, 637
——— *v.* Pritchard, 87
——— *v.* Pybus, 13, 16
——— *v.* Symes, 641
——— *v.* Trigg, 221
——— *v.* Wheeler, 496
Smithson *v.* Cage, 611
Snook *v.* Hollyer, 663
Soane *v.* Ireland, (552)
Sockett *v.* Wray, (488)
Soilleux *v.* Herbst, (643)
Somerset (Duke of) *v.* Fogwell, 555
Soulsay *v.* Hodgson, (669)
Spencer *v.* Spencer, 502, (503)
Spettigue *v.* Carpenter, 641
Sprange *v.* Barnard, (487)
Spriggens *v.* Nash, (668)
Spring *d.* Titcher *v.* Biles, (500); 515
Stackhouse *v.* Barnston, 58
Stafford (Lord) *v.* Buckley, 5, 12
Stanhope *v.* Keir, 480, (484), 486
Stapleton *v.* Conway, 63
Stead *v.* Nelson, 469
——— *v.* Salt, 661
Steers *v.* Harrop, 639

Stephens *v.* Snow, (59)
Stiffe *v.* Everett, 308
Stiles *v.* Attorney-General, (63)
—— *v.* Triste, 638
Still *v.* Halford, 680
Stittwell *v.* Wilkins, 68
Stockdale *v.* South Sea Company, 220
Stokes *v.* Lewis, 651
Stone *v.* Knight, 655
—— *v.* Wishart, 69
Storey, *Ex parte*, 643
Storton *v.* Tomlins, 111
Strachan *v.* Thomas, 59
Strangford *v.* Green, 661
Straton *v.* Rastall, 114
Street *v.* Rigby, 634, 648
Stuart *v.* Kirkwall, 117
—— *v.* Nicholson, 646
Sutherland (Countess of) *v.* Northmore, 469, 498
Sutton *v.* Jones, 69
Swaby *v.* Dickon, 77
Swift *d.* Huntley *v.* Gregson, 500
Sykes *v.* Hastings, 69
Symmons *v.* Mortimer, 96
Symonds *v.* Lownd, 223
Synge *v.* Jervoise, 640

TALBOT *v.* Eagle, (554)
—— *v.* Shrewsbury (Earl of) 561
Talentine *v.* Denton, 4
Tanfield *v.* Irvine, 75
Tattersall *v.* Groote, 634
Taylor, *In re*, 639
—— *v.* Johnston, 477
—— *v.* Parry, 645, 646
Tetley *v.* Tetley, (108)
Tew *v.* Winterton (Lord), 63
Thistlewood, *Ex parte*, 55
Thomas *v.* Hewes, 652, 654
—— *v.* Thomas, 500
Thompson, *Ex parte*, 54
—— *v.* Brown, 646
—— *v.* Charnock, 634
—— *v.* Thompson, 52, (54)
Thorp *v.* Cole, 661
Thorpe *v.* Cooper, 649
Thursby *v.* Plant, 23, 24
Tierney, *Ex parte*, (51)
Tollett *v.* Saunders, (672)
Tomfield's Case, 17
Tomlinson *v.* Dighton, 468, 491, 500, 515
Toussaint *v.* Hartop, 662
Travell's Case, 468, 499
Traverse *v.* Twiselton, 666
Tredway *v.* Fatherley, 223
Tringham *v.* Bethune, 95
Trippet *v.* Eyre, (670)
Tucker *v.* Thurston, 109
—— *v.* Tucker, 500
Tuffnell *v.* Page, 488
Tuke *v.* Cheek, 59
Tunno and Bird, *In re*, 645, 672
Turner *v.* Turner, 5, (12), 13
Tyler *v.* Jones, 663
Tyson *v.* Fairclough, 68

UMPHERY *v.* Damyon, 46

VANDEZEE *v.* Aclom, 504
Vanheythusen, *Ex parte*, 51
Vaughan *v.* Atkins, 224
Veale *v.* Warner, 637
Villareal *v.* Mellish, 561, 562
Vines *v.* Durham, 551
Vynior's Case, 664

WADE *v.* Marsh, 45
—— *v.* Paget, 491
Wagstaff *v.* Wagstaff, 487, 491
Wagstaffe *v.* Smith, 117
Wainewright *v.* Elwell, 221
Walford *v.* Marchant, (109)
Walker's Case, 23
Walker *v.* Liscarry, (114)
Wall *v.* Thurborne, 497
Walsal *v.* Heath, 44
Walter *v.* Maunde, 498
Walters *v.* Morgan, 645
Wansborough *v.* Dyer, 657, (660), 680, 683
Warburton *v.* Storr, 664
Ward *v.* Lenthall, 497
—— *v.* Swift, (485), 486
Waterman *v.* Smith, 477
Waters *v.* Mansell, 113
—— *v.* Taylor, 77, (634)
Watkins, *Ex parte*, 560
—— *v.* Brent, 68
Watson *v.* Clement, 665
—— *v.* M'Cullum, 643
Watt *v.* Watt, 489
Webb, *Ex parte*, 51, 55
—— *v.* Jigg, (18), 19, 20, 21, 22
—— *v.* Shaftesbury (Earl of), 550
Webster *v.* Bishop, 641
Weddell *v.* Lynam, 113
Weigall *v.* Brome, 60
Welchden's Case, 40
Welchden *v.* Elkington, 43
Wellesley *v.* Beaufort (Duke of), 561
Wellington *v.* Mackintosh, 648
Wells *v.* Cooke, 670, 671
Whalley *v.* Youde, (87), (94)
Whitaker, *Ex parte*, 55
Whitchurch, *Ex parte*, 659
—— *v.* Holworthy, 361
White *v.* Baugh, 78, 79
—— *v.* Gifford, 663
—— *v.* Lincoln (Lady), 74
—— *v.* Peterborough (Bishop of), 68
Whitehead, *Ex parte*, 55
Whitfield *v.* Fausset, 9
Wigson *v.* Garrett, 372

Wilkes *v.* Davis, 633, 636
——— *v.* Holmes, 487
Willan *v.* Lancaster, 487
Williamson *v.* Goold, (99), 112
Wilmot *v.* Alchin, (500)
Wilson *v.* Piggott, (502)
——— *v.* Poe, 69
——— *v.* Smee, 680
——— *v.* Thorpe, 636
——— *v.* Weddall, 222
Wilton *v.* Bye, 59
Windsor (Dean and Chapter of) *v.* Gover, 4
Winpenny *v.* Bates, 641
Winstandley's Case, 496
Winter *v.* Mouseley, 2
——— *v.* White, 649, (650), 652
Witham and Bland's Case, 496
Witherhead *v.* Harrison, 38
Withers *v.* Bircham, 297
——— *v.* Withers, 201
Wollen *v.* Tanner, (500)
Wood *v.* Dodgson, 57
——— *v.* Hitchings, 68
——— *v.* Perrott, (94)
——— *v.* White, 498
Wood *v.* Wood, 78
Woodyatt *v.* Gressley, 68
Woolley *v.* Clarke, 637
——— *v.* Kelly, 637
Worrall *v.* Jacob, 496
Worthington *v.* Barlow, 657, (658)
Wren *v.* Kirton, 78
Wright, *Ex parte*, 55
——— *v.* Barlow, 477, 478
——— *v.* Cadogan, 468
——— *v.* Englefield, 468
——— *v.* Rumball, 32
——— *v.* Wakeford, (478), 479, 480
Wrightson *v.* Bywater, 655, 662, 663
Wroth's Case, (7)
Wykham *v.* Wykham, 505
Wynn *v.* Newborough (Lord), 77
Wynne *v.* Griffith, (494)

YARD *v.* Ellard, 656
Yems *v.* Smith, (94), 95
Young *v.* Miller, 670, (671)

ZOUCH *v.* Forse, 201

ANNUITIES.

PRELIMINARY DISSERTATION.

1. *Nature and Incidents of Annuities in general—Personal Annuities and Rents—Election of Grantee*, 1.—*Rent by way of Use*, 7.—*Rent* pour autre vie, 9.—*Remedies—Writ of Annuity; Debt*, 16.—*Seisin of a Rent, Attornment*, 24.—*Remedies of an Executor or Husband*, 27.—*Distress*, 30.—*Entry*, 46.—*Sale in Equity*, 49.—*Sale on Bankruptcy or Insolvency*, 51.—*Surety*, 52.—*Extinguishment of Rents*, 58.—*Apportionment*, 60.—*Interest on Arrears*, 63.—*Office and Powers of a Receiver*, 68.

2. *Provisions of the Annuity Act*, 53 *Geo.* 3, *c.* 141; 79.—*Form of Memorial*, 81.—*Time of Inrolment*, 85.—*Contents of Memorial*, 86.—*Names of Parties beneficially interested*, 96.—*Retainer of Part of Consideration*, 96.—*Annuities exempted from Inrolment*, 106.—*Vacating Securities for Annuities*, 110.

1. The nature and incidents of annuities in general.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Definition of a personal annuity.

An annuity, in the strict technical acceptation of the word, is defined by Lord Coke to be, a yearly (*a*) payment of a certain sum of money granted to another in fee, for life, or for years, charging the person of the grantor only. Co. Litt. 144. b. [And not made as interest for a debt. *Winter* v. *Mouseley*, 2 B. & Al. 802; *Ex parte Brocklis*, Buck, 408.]

(*a*) [If the payments are to be made at regular consecutive periods, whether of greater or less extent than a year, it is an annuity. *Anon.*, Dyer, 24; Roll. Abr. *Annuity*, where a payment at intervals of twenty years is said to have been held an annuity. But a covenant with A. and his heirs to find a monk to serve a chapel every *holiday*, under a penalty of 5*l.* for each default, was held not to operate as a grant of an annuity. However, a payment on the usual quarter or half-yearly days, though those days do not mark strictly equal divisions of time, is clearly an annuity. *Vide infra*, Vol. 4, p. 469.]

Payment at irregular intervals.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Distinction between a rent-charge and a rent seck.

If a man, seised of land, grant a yearly rent, to be issuing out of the land to another in fee, or in fee tail, or for term of life, &c., with a clause of distress, &c., it is a rent-charge; but if the grant be without a clause of distress, then it is a rent seck, or a dry rent, for which, before 4 Geo. 2, c. 28, s. 5, no distress was incident. Litt. s. 218; Gilb. Rents, 38; Noy's Max. 40, 5th ed.; 132, 9th ed. [See as to rents, *infra*, Vol. 4, p. 325, *et seq.*]

How granted.

[An annuity cannot be granted *inter vivos* without deed; and there must be present and distinct words of grant even in an instrument under seal to create an annuity; an agreement to grant is not sufficient. Co. Litt. 144. b.: *Nield* v. *Smith*, 14 Ves. 491: *In re Locke*, 2 Dowl. & Ry. 603. In the latter case it is said, that the word "grant" must be used. As an annuity cannot be granted, so it cannot be released, without deed. *Cupit* v. *Jackson*, M'Clel. 495; 13 Price, 721.]

When both the person and estate are charged, it is generally termed an annuity;

If both the person and the estate be made liable, as they most commonly are, then it is generally called an annuity: whether the one or the other shall be liable, is in the election of the grantee; which election, when once distinctly made, is final and conclusive. Co. Litt. 144. b.; Litt. s. 219; 1 Bac. Abr. 177, Gwill. ed., *Annuity*.

and the grantee may elect which it shall be.

Thus, says Littleton, "if a man grant by his deed a rent-charge to another, and the rent be behind, the grantee may choose whether he will sue a writ of annuity for this against the grantor, or distrain for the rent behind, and the distress detain until he be paid. But he cannot do or have them both together, &c.; for, if he recover by a writ of annuity, then the land is discharged of the distress, &c.; and if he do not sue a writ of annuity, but distrain for the arrears, and the tenant sue his replevin, and then the grantee avow the taking of the distress in the land in a court of record, then is the land charged, and the person of the grantor discharged of the action of annuity." Litt. s. 219; Roll. Abr. *Annuitie*, F.; 2 Sand. Uses, 250. [See *Fulwood* v. *Ward*, 2 And. 1; Poph. 86: *Bedwell* v. *Bedwell*, Cr. Car. 171: *Jenyx* v. *Applefourth*, 1 Brownl. 182: *Foster* v. *Jackson*, Hob. 58. See also *Brown* v. *Claxton*, 3 Sim. 225.]

Some cases in which the grantee cannot elect.

But if a man grant a rent-charge to another and his heirs, and the grantee dies, and his widow brings a writ of dower against the heir, and the heir, in bar of her dower, claims the same to be an annuity, and not a rent-charge, in order to defeat her dower;—because, of an annuity that charges only the person, and issues not out of any lands or tenements, she is not dowable; Co. Litt. 32. a.: —yet the widow shall recover her dower; for the heir cannot deter-

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

mine his election by claim, but by suing of a writ of annuity, as Littleton says; neither can the heir after the endowment have a writ of annuity for the two parts which remain, because that would not be according to the deed of grant, for either the whole must be a rent-charge, or the whole an annuity. But Littleton is to be understood with some limitation: for, of a rent granted for equality of partition, a writ of annuity does not lie, because it is of the nature of the land descended. [And recoverable by distress at common law, Litt. s. 252.] Also, of such a rent as may be granted without deed, a writ of annuity does not lie, though it be granted by deed. Co. Litt. 144. b. Nor upon a rent created by way of reservation, 1 Roll. Abr. 226 (C), pl. 1; Co. Litt. 144. a. Nor upon any rent due by prescription against an heir; Bro. *Annuitie*, pl. 45; because it cannot be known whether he have any land by descent from the same ancestor who granted the rent. Poph. 87; 1 Roll. Abr. 227 (D); Co. Litt. 102. a: 2 Vin. Abr. 507. Nor upon a rent granted for allowance of dower or recompense of a title, because it is in satisfaction of a thing real, and therefore shall not fall into matter personal, but retain the nature of the thing for which it is given. Plowd. Ann. 240 (*b*).

Every rent-charge is an annuity, but every annuity is not a rent-charge.

This election of the grantee to convert an annuity into a rent-charge, and a rent-charge into an annuity, by the application of his remedy, shews that every rent-charge is properly an annuity, though every annuity be not a rent-charge; until by such determination in the choice of the remedy, the grantee may have made it *personal* by charging the person of the grantor, or *real*, by distraining on his land.

Annuity by prescription.

The sure test of the difference between an annuity and a rent-charge is the remedy which the law gives for recovering the arrears. Thus, a man in replevin prescribed that the plaintiff and his ancestors have had common in his land, and used to pay ten shillings rent per annum to him and his ancestors for the same common, and so avowed for the ten shillings; and it was holden good by the Court: and they said, this is not rent, but *annuity*, for he cannot have assize, as he cannot have rent out of his own land; and yet it was held a good prescription by the Court: but he ought to allege seisin: and so, it appears, a man may have a prescription to distrain in his own land: Bro. Abr. *Prescription*, pl. 1; 2 Vin. Abr. 504, *Annuity* (A. 2), pl. 2; 7 Co. 23 b.

Although a proper rent cannot

A rent, in the strict acceptation of the word, cannot be granted to a subject (*Mountjoy's case*, 5 Co. 4), out of an incorporeal inherit-

(*b*) [As to the remedy for a rent-charge upon rates, granted by a quorum of commissioners under a local act, see *Cane* v. *Chapman*, 1 Nev. & P. 104.]

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL

ance, such as a rent, a common, an advowson, a fishery, an office, a corrody, the mulcture of a mill, tithes, fairs, markets, liberties, privileges, franchises, and the like; but only out of lands or tenements whereunto the grantee may have recourse to distrain, or which may be put in view to the recognitors of an assize. Bro. Abr. *Assize*, pl. 2; Co. Litt. 144. a.: 7 Co. 23 b; *Talentine* v. *Dentor*, Cro. Jac. 111: *Rickman* v. *Garth*, Ibid. 173. Yet such a grant will bind the grantor by way of contract, but the grantee cannot distrain. Co. Litt. 47. a.: *Dean and Chapter of Windsor* v. *Gover*, 2 Saund. 302: [*Bally* v. *Wells*, 3 Wils. 25. But the Queen may by her prerogative distrain all the lands of her lessee for a rent reserved out of an incorporeal hereditament. Co. Litt. 142. a; Gilb. Rents, 20. See further *infra*, Vol. 4, p. 250.]

be granted out of an incorporeal inheritance, yet it will be good as a contract.

Importance of pointing out grantee's right of election.

The right of election which the grantee enjoys, of charging the person, or distraining on the land, is a very important consideration, as the exercise or waiver of this right may materially affect the interests both of the grantor and grantee (*c*). It is not, however, to be imagined, that any other action which a grantee may bring in consequence of having such additional remedy given him by the grant, for recovering the arrears of the annuity against the grantor or his representatives, such as debt, covenant, or the like, will produce the same effect as a writ of annuity, which is a specific remedy, and attended with that specific effect. Plowd. Ann. 239.

An action of debt, covenant &c., do not produce the same effect as a writ of annuity.

Of the determination of the election.

Neither the presumption of law, nor the express grant as rent, shall take from the grantee the benefit of his election, where no default was in him. Therefore, said Chief Justice *Popham*, if a rent-charge be granted in tail, the grantee may bring a writ of annuity and thereby prejudice his issue, because then it shall not be taken to be an intail, but as a fee-simple conditional *ab initio*. *Fulwood* v. *Ward*, Poph. 87. If the grantee of a rent bring an assize for it, he shall never after have an annuity; because, by bringing the assize, he has elected it to be a rent. But this determination of the election of a grantee must be by action or suit in a Court of record: for although the grantee distrain for the rent, yet he may bring a writ of annuity and discharge the land. But if the grantee bring a writ of annuity, and at the return thereof appear and count, this is a determination of his election in a Court of record, although he never proceed any further. So, if the grantee bring an assize for the rent, and make his plaint, he shall never after bring a writ of

(*c*) [These remarks on the writ of annuity are retained, by way of illustration, although the remedy is now obsolete.]

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

annuity. But the purchasing a writ of annuity, and entry of it in a Court of record, or of an assize, is no determination of the election; because a stranger may purchase a writ in the name of the grantee, and enter it of record; but if the grantee appear thereto, &c., that amounts to a determination of his election, as it has been said. Co. Litt. 145. a. So, an avowry in a Court of record, which is in the nature of an action, is a determination of his election before any judgment given. Co. Litt. 145. b. So, if A. grant a rent-charge to B., which is paid to him, and then B. grant it over to C., and the tenant of the land attorn, C. shall not in that case have his election to make this an annuity, but must take it as a rent-charge. Co. Litt. 150.

How an annuity is said to be personal.

When an annuity is said to be *personal*, not *real*, it is not to be understood to be that species of personalty which vests without any specific bequest in the executors. If proceeding out of the personal estate of the grantor, it is personal only as to the remedy, but properly real as to its descent to heirs. *Turner* v. *Turner*, Ambl. 782; 1 Br. C. C. 324. So in *The Earl of Stafford* v. *Buckley*, 2 Ves. sen. 179, (when the annuity had been granted by Charles II, in fee, out of Barbadoes duties), Lord *Hardwicke* said, all the rest of the personal estate, that could pass to executors, would go to them: but this is a kind of personalty which, according to Doctor and Student, p. 90, 18th Ed., would not be assets in executors, and consequently will not go to them by being named executors; an annuity in fee being a personal inheritance, which the law suffers to descend to the heir, but has nothing to do with the realty, as appears from Co. Litt. 20.

Rent-charge without charging the person.

Littleton says, if a man would that another should have a rent-charge issuing out of his land, but would not that his person be charged in any manner by a writ of annuity, then he may have such a clause in the end of his deed:—*Provided always, that this present writing, nor any thing therein specified, shall any way extend to charge my person by a writ or an action of annuity, but only to charge my lands and tenements with the yearly rent aforesaid, &c.* Then the land is charged, and the person of the grantor discharged. Litt. s. 220. For the operation of this sort of proviso, see Dy. 222 a, and 2 Co. 72 a. Thus it appears, that when in a general grant the law gives two remedies, the grantor may provide that the grantee shall not use one of them, and leave the party to the other. Co. Litt. 286. b. But where the grantee has but one remedy, there that remedy cannot be barred by any proviso, for such a proviso would be repugnant to the grant. Co. Litt. 146. a.; 2 Vin. Abr. 508, pl. 7.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Annuity of lands in two counties.

If a rent be granted out of land in two counties, an assize does not lie, but a writ of annuity: the reason being, it is presumed, because the lands of both counties cannot be put in view of the recognitors of the assize. But Brooke particularly says, that if a man grant rent out of land in one county, and give a power to distrain for it upon land in another county, and he bring assize, the assize shall be in the first county; but if both lands lie in the same county, they shall be both put in view. Bro. Abr. *Rentes*, pl. 22; Co. Litt. 147. a.; 7 Co. 23. b.

Annuity granted by two persons.

If A. be seised of lands in fee, and he and B. grant a rent-charge to one in fee, this *primâ facie* is the grant of A. and the confirmation of B.; but yet the grantee may have a writ of annuity against both. So, if two men grant an annuity of twenty pounds per annum to another, although the persons be several, yet he shall have but one annuity: but if the grant be *obligamus nos et utrumque nostrum*, the grantee may have a writ of annuity against *either* of them; but he shall have but one satisfaction. Co. Litt. 144. b.

A personal annuity is assignable.

Not only the grantee but his heirs, and his or their grantee also, may have a writ of annuity. Co. Litt. 144. b. Formerly, it was doubted whether an annuity was assignable, though assigns were mentioned in the grant; the argument being, that it was a mere personal contract, and therefore a *chose en action*. See the cases in 2 Vin. Abr. 515, and 3 Vin. Abr. 151. But in a case in C. B. 3 Car. I, this objection, which in strictness of law carried force with it, was overruled. *Gerard* v. *Boden*, Hetl. 80. It seems, too, that naming *assigns* is not essential to the making an annuity assignable, the principle of the objection to its being so being the same, whether *assigns* are mentioned or omitted. However, Perkins, in the special case of an annuity *pro consilio impendendo*, requires naming of assigns. Perk. s. 101. Even then, too, he questions the annuity being assignable. But this was settled in *Maund's case*, 7 Co. 28 b; one point resolved being, that express words would make such an annuity assignable. Hargr. n. Co. Litt. 144. b. (1).

The heirs are not bound, unless named in the grant.

If a man grant an annuity to another and his heirs, without saying *for himself and his heirs*, it shall determine by the death of the grantor; although he may so grant a rent out of land, or a rent-charge, of which he is seised; for the rent charges the land, and the annuity the person only. Bro. Abr. *Charge*, pl. 54; and *Estates*, pl. 65. So, if a rent-charge be granted to a man and his heirs, he shall not have a writ of annuity against the heir of the grantor, although he has assets, unless the grant be for him and his heirs. Co. Litt. 144. b. The reason is, because our law presumes that it

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

is not intended to include the heir in the obligation, when he is not named; and consequently, in the case supposed by Lord *Coke*, it is too late to elect to make the rent-charge an annuity after the death of the grantor. See Co. Litt. 383. b, 384. b, 386. a; 10 Co. 128 a; 2 Vin. Abr. 505, *Annuity* (B). It would be the same, though the grantor should by his deed oblige himself and his heirs to warrant the annuity to the grantee and his heirs; for this does not enlarge the grant; *car garanty ne poit amender un estate.* Plowd. Ann. 236. In *Bodvell* v. *Bodvell*, Cro. Car. 173, the Court held, that an annuity which charges the person who grants it, though with a clause of distress, not being granted *for himself and his heirs*, until election made and a distress taken, is merely personal; and therefore that a release of actions personal is clearly a bar.

Successors of bodies politic are bound without being named in the grant.

But this reasoning fails in application, if the grantor of the annuity be a body politic, and as such has perpetual continuance. Harg. n. Co. Litt. 144. b, (2). As, if formerly an abbot, with consent of his convent, had, by deed under their common seal, granted an annuity to another in fee, without saying *for him and his successors*, yet would his successors have been charged with the annuity. And so it was adjudged in *Sir Thomas Wroth's case*, Plowd. 457, that, although the king had granted to him an annuity without saying in the patent *for his heirs and successors*, yet that it would bind his successors: for he granted it as king in his political capacity, which is perpetual, and never dies, but has continuance in his successor.

A void rent-charge may be a good annuity.

Where a person intending to grant a rent does it in such a manner, as to be void as a rent, yet it shall be generally good as an annuity: as, if the land out of which it is to be issuing do not belong to the grantor; the fund with which it is charged be insufficient; the person directed to pay it be misnamed; or the sources out of which it is to arise be uncertain, precarious, or imaginary. For, in general, the words in the deed, *to perceive out of*, operate as a limitation from whence the grantee is to receive what is granted. And this difference is taken, that where it is granted by the name of parcel of another rent, &c., if the grantor have no such rent, the grant is wholly void; and when it is granted to perceive of such a sum, &c., it is good to charge the person by the word *perceive*. Br. Ab. *Grauntes*, pl. 4; 2 Vin. Ab. 507 (E).

The word *perceive* charges the person.

Creation of Rents by Way of Use.]—Before the Statute of Uses, a rent might be newly created by bargain and sale; because, when the money, as an equivalent, was given, and ceremonies or words of

As to the creation of rents by way of use.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Rent by way of use.

law were wanting, the Chancery supplied them; therefore this was good to pass the estate, without any words of granting.

But, since the statute, a rent cannot be newly created by bargain and sale, because there ought to be a freehold in some other person to be executed in *cestui que use;* but there can be no seisin of this rent in the bargainor, because no man can be seised of a rent in his own land; and, consequently, there can be no estate to be executed in the bargainee. *Chudleigh's case,* 1 Co. 127 a; Gilb. Uses, 86, 281, 287.

The statute has two provisions for the execution of rents:—the first for rents *in esse* limited to uses, or created *de novo* to uses, which are executed in the same manner as uses of corporeal hereditaments; 27 Hen. 8, c. 10, s. 1;—the other, for rents limited in use out of the seisin in the land of some other person *ex gratiâ,* where any person stands seised of any lands to the use that some other person may receive a rent thereout, which the statute executes in the same manner as if a sufficient grant had been made to him by the person seised to the use, and gives the *cestui que use* a power of distress. 27 Hen. 8, c. 10. ss. 4, 5; *vide infra,* p. 25. This clause, it has been held, relates as well to rents limited since the statute, as to rents then *in esse;* Dy. 362 b, pl. 21: *Danby* v. *Conyers,* 1 And. 51; Bendl. 315, pl. 299: *Rivett* v. *Godson,* Sir W. Jones, 179; therefore, if lands be conveyed to A. and his heirs, to the use that B. and his heirs may receive a given rent, the use will be executed by the statute. Sug. Gilb. Uses, 193. But, if lands are conveyed to A. and his heirs, to the use, intent, and purpose that B. and his heirs may receive a rent, with a declaration that B. and his heirs shall stand seised of the rent to the use of C. for life, with remainder over; the rent is executed in B., and then C. and the remaindermen take only the trust of the rent. *Chaplin* v. *Chaplin,* 3 P. Wms. 229, 231; Butl. n. Co. Litt. 271. b. III. 4; where the learned annotator says, "If the estate be conveyed to A. and his heirs, to the use that B. may receive a rent for life; and, after his decease, to the use that his first and other sons successively, and the heirs of their respective bodies, may receive the rent; these, *it may be contended,* are distinct rents; and therefore the rent to the second son *may be considered* too remote, as being a new rent limited to take effect after an indefinite failure of the issue of the first son. Objections also *may be made* to recoveries suffered by the father and son, as the tenant to the *præcipe* being made by the father, he will not be seised of that rent in which the son's in tail subsists. The way, therefore, to limit the rent is, to grant a rent

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Rent by way of use.

to a stranger and his heirs, that he may regrant them to the intended uses." And see Butl. n. Fearne's Remainders, 529. The above doubts seem to have been founded on Lord *Hardwicke's* observations, in *Whitfield* v. *Fausset*, 1 Ves. sen. 390-1. But as the limitations of the use of the rent in that case are not clearly stated, and as his Lordship inclined to the opinion that it was but one rent, the correctness of the above doubts is extremely questionable. However, those doubts may be avoided without resorting to a grant and regrant. For the grant of a rent-charge *de novo* to uses is within the first section of the statute. Bac. Uses, 43; and see 1 Sand. on Uses, 101, 3rd Ed. Indeed, the learned annotator, in another place, says, "If it is intended to limit a rent in strict settlement, it is necessary to do it by way of grant at common law to some person and his heirs, to the uses intended to be limited. This gives the grantee the mere seisin to the uses, and the uses declared upon it will be executed by the statute." Butl. n. Co. Litt. 298. a. Mr. Sugden expresses the same point in these words—the rent may be granted to a stranger to the uses at once; see *Boscawen* v. *Cook*, 1 Mod. 223: *Cook* v. *Herle*, 2 Mod. 138, *S. C.*; although, if limited by way of use to the stranger, the ulterior intended uses would be mere trusts. See *Chaplin* v. *Chaplin*, 3 P. Wms. 229; Sug. Gilb. Uses, 193.

Stat. 29 Car. 2, c. 3, s. 12.

Any estate *pur autre vie* may be devised;

if no devise, shall be assets in the heir;

and if no special occupant, shall be assets in the executors;

and be distributed as personal estate.

Rents pur autre vie.]—By the statute for preventing frauds and perjuries, 29 Car. 2, c. 3, s. 12, [repealed by the stat. 7 Will. 4 & 1 Vict. c. 26, s. 2], it was enacted, "That from henceforth *any* estate *pur autre vie* shall be devisable by will in writing, signed by the party so devising the same, or by some other person in his presence, and by his express directions, attested and subscribed in the presence of the devisor by three or more witnesses; and if no such devise thereof be made, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of a *special occupancy*, as assets by descent, as in case of lands in fee-simple; and in case there be no special occupant thereof, it shall go to the executors or administrators of the party that had the estate thereof by virtue of the grant, and shall be assets in their hands."

By Mr. Fazakerley's act, 14 Geo. 2, c. 20, s. 9, [repealed by the stat. 7 Will. 4 & 1 Vict. c. 26, s. 2], after reciting the above section of 29 Car. 2, c. 3, it was enacted, "That such estates *pur autre vie*, in case there be no special occupant thereof, of which no devise shall have been made according to the said act for prevention of frauds and perjuries, or so much thereof as shall not have been

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

so devised, shall go, be applied and distributed, in the same manner as the personal estate of the testator or intestate."

Rents pur autre vie.

7 Will. 4, & 1 Vict. c. 26, s. 6.

[By the stat. 7 Will. 4 & 1 Vict. c. 26, s. 6, it is enacted, "that, if no disposition by will shall be made of any estate *pur autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy, as assets by descent, as in the case of freehold lands in fee-simple; and in case there shall be no special occupant of any estate *pur autre vie*, whether freehold or customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant; and if the same shall come to the executor or administrator either by reason of a special occupancy, or by virtue of this act, it shall be assets in his hands, and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate." The only alteration introduced by the recent statute is to render estates *pur autre vie* in copyholds transmissible in default of special occupancy to personal representatives, and chargeable and distributable in all respects as personal estate.]

Rent *pur autre vie*, without words of limitation, held to belong to personal representative.

Bearpark v. *Hutchinson.*

[J. The long-debated question, whether a rent granted *pur autre vie*, without words of limitation, belonged to the executor or administrator under the Statute of Frauds, (or rather now under the recent Statute of Wills), or becomes extinguished, for the benefit of the owner of the land, was decided in the case of *Bearpark* v. *Hutchinson*, 4 Moore & P. 848; 7 Bing. 179, which was an action of replevin to a distress levied by the administrator of the owner of a yearly rent-charge of 60*l.*, which was granted to the intestate, (without words of limitation), *during the life of B.*, who was yet living. It was held, that the rent had not ceased, and therefore that the distress could be sustained. Lord C. J. *Tindal*, after remarking that the first part of the 12th section of the statute 29 Car. 2, c. 3, rendering estates *pur autre vie* devisable, extended to a rent-charge, observed—"If it is comprehended within the first branch, it is extremely difficult to put any construction on the second branch, so as to exclude it from that also; for the section goes on thus: 'And if no such devise thereof be made, the same shall be chargeable,' &c.; evidently intending that the second branch of the section shall be as comprehensive as the first, and shall relate precisely to the same subject-matter. And if this be the just construction, the second branch would govern estates *pur autre vie*, in

rents, as well as in any lands or tenements; and such estates would pass to the personal representative of the grantee, where the heirs are not named in the grant. The argument on the part of the plaintiff is, that the second part of the section of the Statute of Frauds is not to be applied to all estates *pur autre vie*, but that it is limited and restrained to such estates as were capable, before the statute, of occupancy; and that, as there could be no occupant of a rent-charge, inasmuch as it lay only in grant, and was not capable of actual possession, so such estate was not within the statute. It may certainly be conceded, that there could not be any general occupant of a rent, for the reasons above assigned; that is, if the rent were granted precisely as in the present case, without any mention of heirs, that no stranger could claim the enjoyment of it; but it is laid down by Lord *Coke*, and supported by other authorities, that, both in annuities and in any other thing that lieth in grant, there may be a special occupant. Now, whether the expression 'special occupant' is strictly proper, or is used by way of analogy only, as descriptive of the person, not who should occupy or enter upon, but who should receive or take rent, is immaterial; it is enough to say, the special occupant of rent was a legal phrase, known and in use long before and at the time the Statute of Frauds was passed. Even *Vaughan*, C. J., when arguing that the rent determines on the death of the grantee, uses the expression—'That, if rent be granted to a man and his heirs, during another's life, the heirs shall have it, not as a special occupant, (as the common expression is), but as a descendible freehold;' thereby admitting the phrase of a special occupant of rent to be one in common use, and possessing a known meaning. But the limitation or restriction in the statute applies only to such estates whereof there could, by law, be a special occupant. 'In case there be no special occupant thereof,' says the statute, 'then it shall go to the executors or administrators of the party who takes the estate by the grant.' The sounder construction of the second branch of the section is, therefore, to make it include the grantees of rents; as such estates were held, in common parlance, to be the subject of special occupancy; and this is at the same time more consonant to the construction of the whole section, which seems to require that the same subject-matter as is made devisable, should also be made to vest in the personal representatives, if not devised, and if no special occupant is named in the original grant. And this interpretation of the act, if it can be drawn from the words, is evidently more consistent with the spirit and intention of the statute; for if it was inconvenient in the case of tenancy *pur autre vie* in land,

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Rents pur autre vie.

that a stranger might enter and enjoy it, upon the death of the tenant, living *cestui que vie*, it was equally inconvenient, that, in case of a grant of rent, upon the death of the grantee, living *cestui que vie*, the tenant of the land should continue to hold it, without paying the rent to any one. We think, therefore, the present case is governed by the statute; and our opinion is confirmed by the decision of Lord Keeper *Harcourt*, in the case of *Rawlinson* v. *Duchess of Montague*, 3 P. W. 264, n., and of Lord Chief Justice *Willes*, in Willes' Rep. 505." J.]

A personal annuity, or an annuity or rent charged on a term for years, may be limited to executors and administrators *pur autre vie*.

Of course it was never thought that there was any objection to the grant of a personal annuity to the grantee, his executors, administrators, and assigns, *pur autre vie*, because it is not a freehold, but only a chattel. *Savery* v. *Dyer*, Ambl. 139; 1 Dick. 162, *S. C.* However, when it is granted with words of inheritance, it is descendible to the heir, and the property itself is so far real, although it is personal only as to the security and the remedy. *Turner* v. *Turner*, 1 Bro. C. C. 325; 2 Wooddeson's Lectures, 72—75; 3 Ibid. 81: *Holdernesse* v. *Carmarthen*, 1 Bro. C. C. 382: *Stafford* v. *Buckley*, 2 Ves. sen. 170, *ante*, p. 5. [In *Turner* v. *Turner*, Lord *Rosslyn* said,—"It has been a little argued, that this must always be considered as personal property. But this is not so, for, from the earliest period of the law, this species of property has been as clearly distinguished as either real or personal estate. Fitzherbert, tit. *Annuities*, has defined it, that it either proceeds from the lands or coffers of another. His definition is mostly copied, though with additions, from [in] Co. Litt. 144. b. When it is charged on land it may be real or personal, at the election of the holder; he may proceed against the land or against the person. If it is out of the coffers it is personal only as to the remedy, but the property itself is real as to its descent to the heir. An annuity then, when granted with words of inheritance, is descendible; but as to its security it is personal only. It may be granted in fee; of course it may, as a qualified or conditional fee." As to an entail of such an annuity, see *Buckeridge* v. *Ingram*, 2 Ves. jun. 663.] So there was no objection to the grant of an annuity or rent-charge to the grantee, his executors, administrators, and assigns, *pur autre vie*, out of a term for years; for, as the grant is good for so many years as the term continues, *St. Auby's case*, Cro. Eliz. 183, it is in effect only a grant for years determinable on lives; and it is only a chattel, because a freehold rent cannot issue out of a term for years. *Butt's case*, 7 Co. 25 a, *infra*. And it has been held, if a man possessed of a lease

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Rents pur autre vie.

for years grant a rent out of it generally, without limiting any estate, this shall be during all the term, and is not determinable by the death of the grantee. 1 Roll. Abr. 831, pl. 5; 10 Vin. Ab. 219, pl. 5. So, where a man possessed of a term for years determinable on lives, devised twenty pounds per annum to J. S., to be paid half yearly out of this estate, if the *cestui que vies* should so long live: J. S. dying in the lifetime of the *cestui que vies*, and the question being, whether this rent should determine by his death, or go to the plaintiff, who was his executor, and be paid to him during the term? the Lord Chancellor decreed it for the plaintiff, the executor of J. S.; and said, if the rent would have continued as long as the term lasted, if J. S. had so long lived, why will it not last so long, though J. S. happened to die sooner? and he added, there is nothing said in the will to determine it. And the above case in Roll's Abridgment was looked upon as being an authority in point. *Gosley* v. *Gilford*, 2 Vern. 35.

Bequest of annuity.

[A personal annuity of inheritance will pass under a general bequest of personal property. *Aubin* v. *Daly*, 4 B. & Al. 59.]

A rent-charge *pur autre vie*, limited to the grantee and his heirs, will on intestacy belong to them.

It should be limited to the grantee, his executors, &c., for years, if &c.

An annuity out of a chattel real limited to heirs, will belong to the executors.

Mr. Preston says, "Annuities, by way of rent-charge, are frequently granted to a person and his *heirs* for a life or lives, instead of being granted for *years*, determinable with the decease of a person, or the decease of the survivor of several persons. When such annuity is derived out of, and depends on, *a freehold interest*, the annuity will, on intestacy, be transmissible and belong to *heirs*, and not to *executors* or administrators: at least such is the opinion entertained on mature deliberation. But every annuity granted out of a chattel interest will be a *chattel interest*, although it be limited to the grantee and his heirs for a *life or lives*. An interest which in its nature is a chattel *real* cannot be rendered transmissible to heirs." Litt. s. 740; 1 Prest. Abs. 446; 1 Com. Dig. 244, s. 35; and see *Butt's case*, 7 Co. 25 a, *infra*.

A personal annuity may be limited to the grantee and his heirs in fee;

or *quasi* in tail;

or *pur autre vie.*

But a personal annuity, that is, where it is not charged on lands, but only secured by grant, bond, or covenant, or bequeathed by will, may be limited to a man and his heirs in fee; F. N. B. 152, A; Finch's Law, 301, ed. Pickering; *Smith* v. *Pybus*, 9 Ves. 574, 575: or *quasi* in tail, as a fee simple conditional at common law, to become absolute and alienable on having issue; an annuity, in the proper sense of the word, not being within the statute *de donis*, and consequently of it, there can be no remainder limited. *Turner* v. *Turner*, 1 Br. C. C. 319, 324; Ambl. 782; 5 Br. P. C. 435. Or such a personal annuity may be limited to a man and his heirs *pur autre vie*. *Savery* v. *Dyer*, Ambl. 140. And in all these cases

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

the personal annuity may be aliened either by the ancestor or his heir; 9 Ves. 574; or by husband and wife, entitled to it in right of the wife; but if not aliened, it will descend to the heir. *Ante*, p. 6; 9 Ves. 575.

And if not aliened, will descend to the heir.

Whether estate *pur autre vie* passes without words of limitation.

[J. Leaseholds for years pass absolutely and entirely under a simple gift of messuages, or other such descriptive appellation: and the same rule of construction might seem to apply to leases for lives; since the doctrine of general occupancy, which regulated the destination of such property in the absence of a special occupant, necessarily supposed that words of limitation (which, when applied to estates *pur autre vie*, are merely the nomination of a special occupant) are not requisite to pass the whole estate; and accordingly we find that where lands were devised to A. for the life of B., and A. died, living B., the executor or administrator of A. was held to be entitled. *Phillips* v. *Phillips*, 1 P. W. 34. In the case of *Doe* v. *Robinson*, 2 Mann. & Ryl. 249; 8 Barn. & Cr. 296, however, a notion seems to have prevailed that words of limitation are necessary in order to vest the entire estate *pur autre vie* in the devisee. The facts were briefly as follow:—The Bishop of D. demised certain lands to A., his heirs and assigns, during the natural lives of B., C., and D., and the life of the survivor. A., by will, devised two closes, part of the demised lands, to his daughter, E. R., without words of limitation, and the residue of his estate to his son. It was held that E. R. (who died during the continuance of the lease) took an estate for her own life only, and that the ulterior interest passed by the residuary clause. Mr. Justice *Bayley*, after quoting the terms of the 12th section of the Statute of Frauds, 29 Car. 2, c. 3, observed—"There is no case in which it has been decided upon that statute what is eventually to become of an estate *pur autre vie*, where it has been partially devised. It appears to me, that it belongs to the representative of the devisor. The Statute of Frauds directs, that an estate *pur autre vie* shall be devisable. But where there is a devise which may or must leave a chasm before the estate determines, the residue is not devised. This brings it within the next provision of the estate, 'if no such devise thereof be made,' which provision ought to attach upon the portion of the estate not devised, in order that that portion may be chargeable as assets in the hands either of the heir or of the executor, thereby giving effect to the object of the act. As 'the executors or administrators of the party that had the estate thereof by virtue of the grant,' must mean the personal representative of the devisor; so, when the statute makes the estate chargeable in the

Doe v. *Robinson*.

hands of *the heir*, such heir must be the heir of the devisor." And the learned Judge then proceeded to argue, that this view of the case was supported by the statute 14 Geo. 2, c. 20, s. 9, which enacts, that estates *pur autre vie*, in case there were no special occupant, not devised according to the Statute of Frauds, or so much thereof as should not have been so devised, should be applied and distributed as personal estate of the testator.[J.]]

Remarks on *Doe* v. *Robinson.*

[[J.] If this decision is to be considered as establishing that words of limitation, or some equivalent expressions, are necessary to pass an estate *pur autre vie* in a will, the same rule must obtain in regard to deeds; for it would be doing violence to every sound principle of construction to apply a stricter rule to the former than to the latter, and it must apply no less to deeds creating than to deeds transferring such estates; and the consequence would be, that, if lands were demised, or a rent granted to A. (without words of limitation) during the lives of C. and D., the estate of A. would cease at his death, though the *cestui que vie* were living, which would have the effect of reducing to a dead letter the enactments (29 Car. 2, c. 3, s. 9, and the 14 Geo. 3, c. 20) disposing of property of this description belonging to a deceased owner, *of which there is no special occupant*. Nor is this the only incongruity to which the doctrine in question would lead; for, suppose a testator, who is possessed of a lease *pur autre vie*, of which there is no special occupant, to bequeath such leaseholds to A., and the residue of his personalty to B., the ulterior interest in the leasehold property, not included in the specific bequest, would, (as is admitted by Mr. Justice *Bayley* in *Doe* v. *Robinson*), be distributable under the statute of 14 Geo. 2, c. 20, as part of the personal estate; in other words, would belong to the residuary legatee, *though the gift to such legatee was expressed in the same terms as the specific gift, which was held to be inoperative to pass it.*[J.]]

Personal annuities of inheritance are not common, because the heirs and executors are only answerable so far as they have assets.

Personal annuities of inheritance are not common in modern times. For if A. grant that he and his heirs (*ante*, p. 6), will pay a yearly sum to B. and his heirs, which forms an annuity in fee; or covenant or give a bond that he and his heirs will pay such an annuity; the heirs of the grantor will not in law or reason be liable to this demand, unless they inherit from their ancestor, who created it, real assets, that is, descendible lands or hereditaments sufficient for that purpose. Co. Litt. 144. b.; 2 Wooddeson's Lect. 75. But the executors or administrators will be bound so far as they have assets, whether they are named or not. Dyer, 14, pl. 69; Co. Litt. 209. a.; Wms. n. 2 Saund. 137 a; Noy's Max. 200, 233,

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

It seems a Court of Equity would compel the executors to set aside assets to answer the annuity; but the annuitant may dispose of the fund.

241, 9th ed. And it seems that a Court of Equity would compel the personal representatives of the grantor, so far as they have assets, to set aside such a sum as would be sufficient to answer the personal annuity for ever; but the annuitant would have the absolute disposition of the fund so set aside. *Smith* v. *Pybus*, 9 Ves. 574. [See 1 Russ. & M. 606; 2 Id. 197.] And as to the personal representatives of an heir, who had real assets by descent from the ancestor who created the personal annuity, it seems therefore to follow that a Court of Equity would compel them to set aside so much of the heir's personal estate as would be sufficient to answer the personal annuity, so far as the value of the real assets descended to the heir would extend. Still it is not a charge upon the land, but only on the person of the heir, in respect to his having real assets; and as to the personal representatives, only in respect to the personal assets if they have any, and then only so far as they will extend. If annuities of inheritance, therefore, were more common, it is obvious they in general would probably be of short duration. They serve, however, to illustrate the principles and distinctions of our law.

The reason of stating when the writ of annuity, and when the action of debt lies.

Remedies for recovering Annuities.]—Although the action by a writ of annuity is at present out of use, 1 Tidd's Prac. 4, 7th ed., being superseded by the action of debt or covenant, *where these remedies can be pursued*, yet it seems proper to state when a writ of annuity, and when an action of debt lies, in order to give a general view of the subject; and because there are cases in which no other action besides the writ of annuity lies.

Where the writ of annuity shall not be had.

If a rent-charge be granted to A. and B. and their heirs, and A. distrain the beasts of the grantor, and he sue a replevin, and A. avow for himself, and make conusance for B., and A. die and B. survive him; B. shall not have a writ of annuity; for in that case the election and avowry for the rent by A. bars B. of any election to make it an annuity, although he assented not to the avowry. Co. Litt. 146. a. In all cases, where the rent-charge is apportioned by act in law, the writ of annuity fails; for, if the grantee should bring a writ of annuity, he must ground it upon the grant by deed, and then he must bring it for the whole. For as in the case of dower, (*ante*, p. 2), if the heir should bring annuity for the remainder of a rent-charge, after the widow had been endowed of a third, it would not be according to the deed of grant, for either the whole must be a rent-charge, or the whole an annuity. Co. Litt. 144. a.

For an annuity of freehold,

For the arrears of an annuity in fee, in tail, or for life, so long as the estate of freehold has *continuance*, there lies no action, but only

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

there only lies a writ of annuity during its continuance.

But for an annuity for years it seems debt lies during its continuance.

a writ of annuity against the grantor, his heirs or successors, provided they be included in the obligation of grant. Com. Dig. *Dette*, (A. 7); see 2 Saund. 304, n. (8). But if an annuity be granted for years, it seems doubtful whether an action of debt lies for it during the continuance of the term. In *Browne* v. *Pendlebury*, Cro. Eliz. 268, (4), it was held, that debt lies upon a grant for years during the term, because it is by the deed as a *contract*. So, *Pelton* v. *Darby*, Comb. 57. So, in *Bendloss* v. *Phillips*, Cro. Eliz. 895, *Yelverton*, J., held, that an action of debt lies for an annuity for years during its continuance; and he took this difference, that where a rent for years is granted originally, and where a rent or annuity is granted in fee and out of it a grant is made for years, there no action of debt lies during the years. And of that opinion was *Fenner*, J., as to the last point, but he doubted of the first; wherefore, *cæteris justiciariis absentibus, adjournatur*. However, in *Tomfield's case*, Cro. Eliz. 3, (7), it was agreed by all the Justices in the Common Pleas that the grantee of an annuity for years cannot have an action of debt for the arrears during the term in the annuity. In *Lucas* v. *Fulwood*, 1 Buls. 15, in an action of debt for an annuity for years, *Yelverton*, J., upon the first moving, conceived the action of debt to be well brought, and he said, "so if lessee for years grants an annuity to another for years, an action of debt well lieth for it." But, *Williams*, J., said, "the plaintiff here is not to have an action of debt if the term do continue, but if the term be determined, an action of debt then lies by him." And so is the 9 H. 7, fol. 16, 17, where it is held, that, if an annuity be granted to one for years, as long as the term continues, a writ of annuity lies for the same; but when the lease is determined, an action of debt lies for the same, and so is the old book of Entries, fol. 151, in debt for an annuity; but here the plaintiff has failed in his action, for he has brought his action of debt, and declares for annuity: this is not good; but the declaration is defective herein in matter of substance; and this clearly is not aided by any statute: and of this opinion was *Yelverton* afterwards; and therefore judgment was given for the defendant. *Brooke* says, that, as long as the annuity continues, a writ of annuity lies, and not a writ of debt, although the annuity should be only for years. Bro. Abr. *Annuitie*, pl. 29. And yet he observes, pl. 46, the executors shall have a writ of debt of the arrears of an annuity incurred in the lifetime of the testator; and so far an action of debt lies for an annuity whilst it continues; and it shall be in the *detinet*, where the writ of annuity is in the *debet*. But where a man devised an annuity, charged on his real estate, to his sister and heir-at-law,

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

a feme covert, and a portion for her daughter, and by codicil said, on condition that they release all right, &c., it was held, that debt cannot be maintained for the arrears of the annuity incurred during the coverture, the sister being dead, and not having released. *Acherley* v. *Vernon*, Fortescue, 188.

Debt does not lie for the arrears of an annuity devised, payable out of lands to A. during the life of B. to whom the lands are devised for life, B. paying the same thereout, so long as the estate of freehold continues. *Webb* v. *Jiggs*.

On this point, the case of *Webb* v. *Jiggs*, 4 Maul. & Selw. 113, is too important, and has too much law, both in the argument and in the judgment of the Court, to be passed over by merely stating the point determined: there, in an action of debt, the plaintiff declared that one *J. Webb* was seised in fee of certain lands at Iver in Buckinghamshire, and being so seised, by his will duly executed according to the statute, gave and bequeathed to the plaintiff an annuity or yearly rent of 10*l.* to be issuing and payable yearly and every year during the life of the defendant, *Martha*, out of the said lands; and also gave and bequeathed the said lands to the said *Martha*, and her assigns for her life, she paying thereout, in manner aforesaid, to the plaintiff, the said annuity or yearly rent; and afterwards the said *J. Webb* died, and his will was duly proved, whereupon the said *Martha* became seised as of freehold for her life of the said lands, and the plaintiff became entitled to the said annuity or yearly rent; and afterwards the said *Martha* married the other defendant *Jiggs*, whereby they became seised of the lands as of freehold in right of the said *Martha* for her life; and so the plaintiff avers, that while they were so seised, and were the pernors of the profits thereof, 75*l.* of the said annuity or yearly rent, for seven years and a half, ending on the 25th of March, 1814, became due from the defendants as the pernors, and still is in arrear and unpaid, whereby *actio accrevit*, &c. Demurrer. Joinder.

Richardson, in support of the demurrer, made three points: 1st, that debt does not lie in this case at the common law. And he took this distinction, that, if an annuity be granted *for years*, debt lies for the arrears, [*sed vide ante*, p. 17], so, if for life, or *pur autre vie*, *after the estate determined*, debt lies. But by the common law debt does not lie for the arrears of a rent or annuity in fee, fee tail or for life, *so long as the estate of freehold has continuance*. And for this he cited *Ognel's case*, 4 Rep. 48 b.; Com. Dig. *Debt*, (A. 6, 7); Id. (B).; also 1 Rol. Abr. 594 (G.), pl. 1, to the same effect. And the reason given is, because the law will not suffer a real injury to be remedied by an action merely personal. 3 Bl. Com. 232. Whether this reason be satisfactory or not, it is enough that the rule of law is so; and the party is not without his remedy, for an assize of *mort d'ancestor*, Fitzh. N. B. 195, or novel disseisin, Co.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Remedy for arrears:—debt.

Webb v. *Jiggs.*

Litt. 178, will lie, or the writ *de consuetudinibus et servitiis*, or the writ of *cessavit*. Co. Litt. 208. In many cases, indeed, according to Litt. sec. 219, "the grantee of a rent-charge may choose whether he will sue a writ of annuity against the grantor, or distrain for the rent behind;" and Lord Coke says upon that, Co. Litt. 144. b., "the grantee hath election to bring a writ of annuity, and charging the person only, to make it personal; or to distrain upon the land, and to make it real." But that is to be understood of a rent granted by deed, which charges the person, and for which a writ of annuity doth lie; but not as in the case at bar, where there is not any charge upon the person. 2dly, If debt does not lie at the common law, neither does it by stat. 8 Anne, c. 14, s. 4. For that statute applies only to cases between landlord and tenant, for rent arrear upon a *lease* or *demise* for life or lives, which this is not. Admitting that a lease may be created by will, 2 Leon. 33, *Machel and Dunton's case*, as if the land were devised to one for life, reserving a rent, and the reversion to another, such a devise might operate as a lease, and give the reversioner the remedy of this statute; yet here is neither lease nor demise, nor lessor nor grantor, neither is there any privity between the parties. 3dly, This action, supposing it maintainable at all, doth not lie against husband and wife, but against the husband only; which is plain from this consideration, that during the husband's life he has the whole pernancy of the profits, and for the rent arrear during his life, his executors, and not the wife, shall be chargeable, though the land itself is chargeable. Thus in *Ognel's case*, 4 Rep. 49 b, one was grantee for life of a rent out of the moiety of a manor, of which moiety a man was seised *jure uxoris*. The rent was in arrear, and grantee died, and his executors brought debt against the husband only for the arrearages. And it was resolved, that by the death of the grantee, the grant for life was turned into the nature of a debt; and forasmuch as the husband took the profits of the land charged with the rent when in arrear, he only without his wife shall be charged in an action of debt; and after his death, debt lies against his executors. So, Com. Dig. *Baron and Feme* (Y), "Debt lies against husband alone for rent incurred during the coverture, upon a lease to the wife *dum sola*," and cites Thoms. Entr. 117.

Gifford, contrà, admitted the rule of the common law to be against the bringing an action of debt, so long as the freehold continues; but that, he said, was only where the freehold is conveyed at the common law, and not where it is by devise, which is by the statute of wills; for to such conveyances none of the writs of assize or other

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Remedy for arrears:—debt.

Webb v. *Jiggs.*

real writs apply. Therefore the plaintiff in this case will be without remedy, if he may not maintain this action. And if it were necessary, in order to maintain it, that there should be a charge on the person, here the defendant is charged with the payment of the rent, for the land is devised to her, *she paying thereout to the plaintiff the said rent*, which charges the person as well as the land. And what Lord *Holt* said in *Ewer* v. *Jones*, 2 Ld. Ray. 937; 2 Salk. 415; 6 Mod. 27; is decisive in favour of this action, and he said that he made no question of it. 2dly, This action is maintainable by the statute of Anne, for it is within the mischief, and therefore within the intent of the statute, though the words thereof be only *lease* or *demise*. And oftentimes the Courts have extended the provisions of a statute to cases which were not within the letter, if they were within the mischief. Plowd. 467. For instance, the statute 9 Ed. 3, c. 3, which gives an action against executors, is extended by equity to administrators, because they are in the same degree. So the statute of Gloucester gives an action of waste against tenant for life or *years;* yet by the equity thereof it lies against him who holds but for a year, or for twenty weeks; for though this be out of the words of the act, it is within the intent. Plowd. 467. And by parity of reason, the Court ought to extend the remedy of this statute to the present case, it being plainly the intention of the statute to give an action of debt for rent arrear, during the continuance of any estate for life or lives; and therefore, though the letter says upon a *lease* or *demise*, yet, by the equity, it shall be intended *by will* also. 3dly, Although the husband might have been sued alone, yet may the wife be joined: in like manner as for rent upon a lease for years or life, made to husband and wife, an action lies against both, because it is for the wife's benefit. 1 Rol. Abr. 348, (X). So here the freehold is in the wife jointly with her husband, and it is for her benefit, and after the husband's death she could not waive it.

Richardson in reply said, there was no reason why the common-law writs should not lie for the recovery of the rent in this case, as well as upon a conveyance at the common law, so far at least as they were applicable to a taking by purchase and not by inheritance: as novel disseisin, where the writ shall be general, *that unjustly, &c. he hath disseised him of his freehold, &c.* For when a statute, as the statute of wills, gives a new right, it gives all such remedies for the recovery of that right, as by law may be applied to it. And a rent, whether created by will or grant, will pass by a common recovery, &c., which shews that it may be the subject of a real action. And notwithstanding what fell from Lord *Holt*, in *Ewer* v. *Jones*, there is no instance of an action lying for a legacy chargeable on

land. *Deeks* v. *Strutt*, 5 T. R. 690, shews that it will not lie for a legacy generally; and the reason there assigned holds equally where the legacy is charged on land. Besides, this is not a legacy, but a rent. And as to this action being within the equity of the statute of Anne, such a construction of an act of Parliament might well obtainly formerly, when the legislature was used to express its intention sparingly, in a few words or sentences only; but in modern times, since it has become the practice to express such intention fully and at large, so that it may be found within the four corners of the act of Parliament, it is unnecessary, and would be highly dangerous to extend it by any intendment; and therefore that doctrine is properly exploded. Upon the last point, he admitted, that, according to the authorities, it rather seemed that the action would lie both ways.—*Cur. adv. vult.*

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Remedy for arrears:—debt.

Webb v. *Jiggs.*

Lord *Ellenborough*, C. J., delivered the judgment of the Court. After stating the pleadings, his Lordship said—"This demurrer was argued at our sittings before Hilary Term in Serjeant's Inn Hall, when it was contended on the part of the defendants, in support of the demurrer, that, at the common law, an action of debt will not lie for a rent or annuity in fee, in tail, or for life, while it continues a freehold interest. And this position was not denied on the other side, but it was contended that it applied only to legal common-law estates, and not to devises by will. And what appears to have been said by *Holt*, C. J., in *Ewer* v. *Jones*, reported in 2 Ld. Ray. 937; Salk. 415; and 6 Mod. 26, 27, was relied on, viz. 'That a devisee may maintain an action at common law against the terre-tenant for a legacy devised, payable out of land; for where a statute, as the statute of wills, 32 & 34 H. 8, gives a man a right, he shall have an action to recover it of consequence; because his right is created by act of Parliament.' But what Lord *Holt* is there stated to have said does not reach this objection; it is said only generally of a legacy or sum of money, not of an annuity or rent for life, in tail, or in fee, and it is to be observed, that in the case of a legacy payable out of land, unless the legatee had his remedy by action of debt, founded on the statute, he would be wholly without remedy in the Courts of common law; whereas the annuitant would not be remediless, but would have an assize to recover his annuity. See *Brediman's case*, 6 Rep. 56 b. And no authority has been stated where the general rule of law, which excludes the action of debt as a remedy for rent or annuity in fee, in tail, or for life, has been confined to annuities or rents created by common-law conveyances, as contradistinguished from annuity or rents created by devise: nor does there seem any

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Remedy for arrears:—debt.

reason for making the distinction. It was next contended on behalf of the plaintiff, that this case was within the provisions of the 4th section of stat. 8 Ann. c. 14, 'for the better security of rents, and to prevent frauds by tenants;' but the language both of the title of the act, and of the enacting clause, shews that the legislature contemplated only the case of rent due from a tenant, holding by lease or demise under his landlord, which is not this case, this being the case of two distinct and independent devises of the land to one person for life, and to another of an annuity issuing out of the same, for the life of the devisee of the land, created by the will of one and the same devisor, and without any such original privity between the devisee of the land charged with the annuity, and the devisee of the annuity charged thereupon, as subsists between a lessor and his lessee. We are therefore of opinion, that the action of debt is not maintainable on the ground of this stat. of Ann. c. 14, any more than it is upon the other ground already considered." [J. So in the case of *Kelly* v. *Clubbe*, 6 J. B. Moore, 335; 3 Br. & B. 30, where, in an action of debt for the arrears of an annuity, the declaration stated that by a certain indenture the defendant granted to the plaintiff during her life an annuity or rent-charge of £200, to be yearly issuing out of certain premises in the indenture mentioned, to hold the same unto her and her assigns during her life, without any deduction in respect of taxes: it was objected, that the principle of *Webb* v. *Jiggs* was not applicable, inasmuch as it did not appear on the face of the declaration that the grantor had a freehold interest in the lands, which he might have held for a long term of years; but the Court thought that the cases were undistinguishable; for that it was to be presumed, unless the contrary was stated, that the annuity for life was granted out of a freehold estate, and not out of a term of years, and therefore that the action did not lie.J.]

Kelly v. *Clubbe.*

A writ of annuity does not lie after the determination of an annuity. But an action of debt lies.

It is an invariable rule, that the writ of annuity only lies whilst the annuity continues payable; so that if the annuity be extinguished by act of the party, or by operation of law, before the writ is purchased, or pending the writ, there the writ of annuity is gone. Bro. Abr. *Annuitie*, pl. 32; Bro. Abr. *Dette*, pl. 145; 2 Vin. Abr. 516, pl. 8.

Debt cannot be brought on a collateral covenant to pay on another's default.

[In *Randall* v. *Rigby*, 4 Mee. & W. 130, lands were bargained, sold, and enfeoffed to R. H. and the defendant, to the use that the plaintiff, his heirs and assigns for ever, should receive and take thereout a yearly rent or sum of £63, payable half-yearly; and, by the same indenture, the defendant covenanted with the plaintiff that R. H. and the defendant, their heirs, &c., or one of them, would

for ever thereafter pay or cause to be paid the said rent of £63. The action was brought in debt for arrears of the rent, and, upon demurrer, it was held that it could not be sustained. Per Lord *Abinger*, C. B.—"The question here is not whether the defendant is liable, but whether he is liable in this form of action. If it had appeared that this was a debt of his own, on which he was liable to the plaintiff, debt might be maintainable as well as covenant; but it is an action on a mere collateral covenant, by which the defendant jointly with another undertakes to secure the payment of an annuity which is issuing out of land. The case of a lessee, who has assigned his lease, is strictly analogous. In *Mills* v. *Auriol*, 2 H. Bl. 433, *Wilson*, J., sums up the position of a lessee under such circumstances in these words—'An action of covenant remains after the estate is gone; but, generally speaking, when the land is gone, the action of debt is also gone, *debt being maintainable because the land is debtor;* covenant is founded on a privity collateral to the land.' The same point has been decided in *Thursby* v. *Plant*, 1 Siderf. 401; 1 Saund. 230, 241, n. (5). The defendant here stands in the same relation to the plaintiff as the original lessee after assignment of the estate (*a*), when he is only suable in covenant, not in debt." *Parke*, B., said—"No doubt this covenant is collateral or in gross in one sense, that it does not run with the land or rent; for that *Milnes* v. *Branch*, 5 Mau. & S. 411, is an authority (*b*); but it is also collateral in the sense contended for by Mr. Wightman, that it is not a covenant to perform any direct duty, but only a collateral one, to secure payment of the rent. Upon this undertaking an action of covenant is the proper remedy, in which the plaintiff will recover by way of damages the amount actually in arrear (*c*). The case falls, therefore, within the principle of the

Remedy by covenant.

(*a*) [That is, after assignment with the assent of the lessor. *Walker's case*, 2 Rep. 23, infra, Vol. 4, p. 359.]

(*b*) [The question, whether the burthen of the covenant to pay rent ran with the land, was not discussed in *Milnes* v. *Branch*, and still remains unsettled; and the decision in that case also left untouched the general question, whether the benefit of a covenant to pay a rent-charge runs with the rent. The *dictum* of the Court, that such a covenant would not run with the rent, has not met with general approval.]

(*c*) [Under the stat. 3 & 4 Will. & M. c. 14, actions of covenant could not be maintained against devisees; but that remedy is given by the stat. 11 Geo. 4 & 1 Will. 4, c. 47, s. 3, *infra*, Vol. 6, p. 412. Upon the former statute it was held, that the devisees of a surety who had covenanted for the payment of rent could not be sued in *debt* for arrears accrued after the death of their testator. *Farley* v. *Briant*, 5 Nev. & M. 42; 3 Ad. & El. 839. But, upon the same statute, the Vice-Chancellor held, that the devisee of the *grantor* of a rent-charge, who had covenanted to pay it, was liable to an action of debt. *Jenkins* v. *Briant*, 6 Sim. 603; and, in *Morant* v. *Gough*, 1 Man. & Ry. 41; 7 B. & Cr. 206, the same was held upon a bond to pay an annuity.]

Remedy against devisees.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

authority referred to in Viner's Abridgment, *Debt*, D., and ranges itself also with that of the lessor and lessee after assignment of the estate, as decided in *Thursby* v. *Plant*, and *Mills* v. *Auriol*. This covenant is collateral in that sense also, and is not like a covenant to pay a sum of money, which becomes a direct duty from the defendant to the plaintiff."]

Seisin of a rent.

It was not sufficient at the common law to support a distress for rent, that such rent was properly reserved or granted, but it was also necessary that the party distraining should have a seisin of the rent, without which there was no privity between him and the tenant;

Attornment.

and therefore, before the statute 4 Anne, c. 16, had rendered attornment in future unnecessary, it was requisite, upon the grant of a rent-charge or rent-service by a common-law conveyance, that the tenant should attorn to the grantee, in order to give him a seisin in law of the rent, without which the grantee could not distrain. Co. Litt. 309, 311. And even this seisin in law was not sufficient to support an assize, or other real action for the rent, for which actual seisin, by receipt of a part of the rent, was required. Litt. s. 235. This latter seisin was not, however, necessary for a distress; because, except in a very few cases, (such as a seisin of encroachment tortiously gained by coercion of distress), the tenant was not permitted to dispute the actual seisin of his lord in a replevin. *Bevil's case*, 4 Co. 9 a, 11 b. But the doctrine of seisin, with relation to a distress for rent, has become nearly obsolete since the statute 4 Anne, c. 16, s. 9, by which it is enacted, "That from and after the first day of Trinity Term, one thousand seven hundred and six, all grants or conveyances thereafter to be made by fine or otherwise of any manors or rents, or of the reversion or remainder of any messuages or lands, shall be good and effectual to all intents and purposes, without any attornment of the tenants of any such manors, or of the land out of which such rent shall be issuing, or of the particular tenants upon whose particular estates any such reversions or remainders shall and may be expectant or depending, as if their attornment had been had and made." And, by sec. 10, it is "Provided nevertheless, that no such tenant shall be prejudiced or damaged by payment of any rent to any such grantor or conusor, or by breach of any condition for non-payment of rent, before notice shall be given to him of such grant." There are, however, some cases in which the seisin of a rent may still come in question: as, in a distress for an ancient rent-charge, created before that act by a conveyance taking effect by the principles of the common law, and not by the Statute of Uses. For the statute 32 Hen. 8, c. 2, s. 4, enacts "That no person or persons shall hereafter make any

By 4 Anne, c. 16, grants and conveyances are good without attornment of tenants;

but not prejudice tenants before notice of grants.

The seisin of a rent-charge granted by a common-law conveyance before the 4 Anne, c. 16, may still come in question.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

avowry or cognizance for any rent, suit, or service, and allege any *seisin* of any rent, suit, or service, in the same avowry or recognizance in the possession of his or their ancestors or predecessor or predecessors, or in his own possession, or in the possession of any other whose estate he shall pretend or claim to have, above *fifty* years next before the making of the said avowry or cognizance." Now, a rent-charge, if created before the first day of Trinity Term, 1706, is not within the statute 4 Anne, c. 16; *Long* v. *Buckeridge*, 1 Stra. 106; nor is any *rent-charge* within the statute 11 Geo. 2, c. 19, entitling the distrainor to avow generally for rents, without alleging a seisin thereof. *Lindon* v. *Collins*, Willes, 429: *Bulpit* v. *Clarke*, 1 New. Rep. 56. And, therefore, such ancient rent-charge still continues under the operation of the act, 32 Hen. 8, c. 2. But, as it has been determined, that this statute does not require an actual seisin by receipt of the rent, but only a seisin in law; *Bevil's case*, 4 Co. 10 b; and see *Fawkner* v. *Bellingham*, Hetley, 36: *Foster's case*, 8 Co. 64; it would, perhaps, be satisfied by shewing any act or assent on the part of the tenant, which would have amounted to an implied attornment at the common law. *Anonymous*, 3 Leon. 17: *Bevil's case*, 4 Co. 12: Bradby on Distresses, 32.

By 27 Hen. 8, c. 10, use in a rent executed into legal estate for which a distress may be made without attornment, independently of 4 Anne, c. 16, although no power of distress, &c., be given by the deed.

However, even before the 4 Anne, c. 16, if a rent were originally granted by way of use, under the 27 Hen. 8, attornment was unnecessary: for, by the Statute of Uses, 27 Hen. 8, c. 10, s. 4, after reciting, " And where also divers persons stand and be seised of and in any lands, tenements, or hereditaments, in fee-simple or otherwise, to the use and intent that some other person or persons shall have and perceive yearly to them, and to his or their *heirs*, one annual rent of x. li., or more or less, out of the same lands and tenements, and some other person one other annual rent, to him and his assigns for term of life or years, or for some other special time, according to such intent and use as hath been heretofore declared, limited, and made thereof;" by the *fifth* section it is enacted, " That in every such case the same persons, their heirs and assigns, that have such use and interest, to have and perceive any such annual rents out of any lands, tenements, or hereditaments, that they and every of them, their heirs and assigns, be adjudged and deemed to be in possession and seisin of the same rent, of and in such like estate as they had in the title, interest, or use of the said rent or profit, and as if a sufficient grant, or other lawful conveyance, had been made and executed to them, by such as were or shall be seised to the use or intent of any such rent to be had, made, or paid, according to the very trust and intent thereof; and

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

that all and every such person and persons as have, or hereafter shall have, any title, use, and interest, in or to any such rent or profit, shall lawfully distrain for non-payment of the said rent, and in their own names make avowries, or, by their bailiffs or servants, make conisances and justifications, and have all other suits, entries, and remedies for such rents, as if the same rents had been actually and really granted to them, with sufficient clauses of distress, re-entry, or otherwise, according to such conditions, pains, or other things limited and appointed, upon the trust and intent for payment or surety of such rent." See *Cromwell's case*, 2 Co. 72 b; Gilb. Uses, 200.

Cestui que use of a fine of a rent, &c., of which there had been attornment, may distrain without another attornment, independently of 4 Anne, c. 16.

So, under the Statute of Uses generally, it was resolved in *Sir Moyl Finch's case*, 6 Co. 68 a.; Co. Litt. 309. b; that if, after attornment, a fine be levied of a reversion of lands, or of a rent to a man and his heirs, to the use of another and his heirs, as by the Statute of Uses, the use and possession come instantly together; and there being consequently no intervening time for the conusee of the fine to bring either a *quid juris clamat*, or a *quem redditum reddit*, for or to receive an attornment to perfect his possession, the *cestui que use* and his heirs should, nothwithstanding, distrain, and have the same advantage as if the conusee's possession had been perfected by attornment and seisin. This construction of the statute was a great strain and violence upon the true reason of law, because it establishes, that a conveyance, which in reason could not be good without attornment, should be sufficient; because it could not have an attornment, which was necessary to make it sufficient. Vaugh. 51. And so, as Lord Coke says, for the same cause, if a man perfectly seised of a seigniory, rent, reversion, or remainder, bargain and sell the same by deed indented and enrolled according to the statute, the bargainee may distrain without attornment, by virtue of the statute. But Lord Coke admits, that if the conusee of a fine, before any attornment had been made, by deed indented and enrolled, bargained and sold a seigniory, &c., to another, the bargainee should not distrain, because the bargainor could not distrain for want of attornment. *Et sic de similibus;* for *nemo potest plus juris ad alium transferre quam ipse habet.* Co. Litt. 309. b. So, if before the statute of Anne the use of a fine of a fee-farm rent derived from the crown before the 22 Car. 2, c. 6, were declared to the conusee himself, as he would be in by the common law, although the rent would pass by the fine, yet it did not enable him to distrain without attornment. *Long* v. *Buckeridge*, 1 Str. 106. 111.

Bargainee of a rent, &c., of which the bargainor is properly seised, may distrain without attornment, independently of 4 Anne, c. 16.

But it is otherwise if no attornment has been made, or the use of the fine be declared to the conusee himself.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

The executors of tenant for life of a rent-charge, and of tenant *pur autre vie*, after the death of *cestui que vie*, might bring *debt* to recover the arrears of such rents by the *common law*. And although the contrary might, at first view, be inferred from the generality of the preamble of the statute 32 Hen. 8, c. 37, yet these words have in construction been restricted to mean, tenants *pur autre vie*, so long as *cestui que vie* lives. Co. Litt. 162. a., b.: *Ognel's case*, 4 Co. 49 b; Wms. n. 2 Saund. 282 (1); Hargr. n. Co. Litt. 162. a. (4), 162. b. (1): *Hoole* v. *Bell*, 1 Ld. Raym. 172. But they could not have distrained, which now they may do by force of that statute, which is as follows:

Executors of tenant for life and *pur autre vie*, of a rent-charge, may have *debt*, or may distrain for arrears incurred in his lifetime.

"*For Recovery of Arrearages of Rents by Executors of Tenant in Fee-simple* [&c.] 32 Hen. 8, c. 37.

"Forasmuch as by the order of the common law, the executors or administrators of tenants in fee simple, tenants in fee tail, and tenants for terms of lives, of rent-services, rent-charges, rent secks, and fee-farms, have no remedy to recover such arrearages of the said rents or fee farms as were due unto their testators in their lives, nor yet the heirs of such testator, nor any person having the reversion of his estate after his decease, may distrain, or have any lawful action to levy any such arrearages of rents or fee farms due unto him in his life as is aforesaid; by reason whereof the tenants of the demesn of such lands, tenements, or hereditaments, out of the which such rents were due and payable, who of right ought to pay their rents and farms at such days and terms as they were due, do many times keep, hold, and retain such arrearages in their own hands, so that the executors and administrators of the persons to whom such rents or fee farms were due, cannot have or come by the said arrearages of the same, towards the payment of the debts and performance of the will of the said testators: For remedy whereof, be it enacted by the authority of this present Parliament, That the executors and administrators of every such person or persons unto whom any such rent or fee farm is or shall be due, and not paid at the time of his death, shall and may have an action of debt for all such arrearages, against the tenant or tenants that ought to have paid the said rent or fee farms so being behind in the life of their testator, or against the executors and administrators of the said tenants; and also, furthermore, it shall be lawful to every such executor and administrator of any such person or persons unto

Vaughan, 39; 2 Roll. 370, 382, 457; Dyer, 375, pl. 20.

Vin. A. 18, 542.

Executors or administrators of tenants in fee simple, fee tail, and for life, of rent services (*f*), rent-charges, rent secks, and fee farms, may have an action of debt, or may distrain for ar-

(*f*) *i. e.* payable to the Lord of the seigniory, or to a person having an immediate or remote reversion in the lands. Com. Dig. *Rent*, (C. 1.)

Definition of rent service.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

whom such rent or fee farm is or shall be due, and not paid at the time of his death as is aforesaid, to distrain for the arrearages of all such rents and fee farms, upon the lands, tenements, and other hereditaments, which were charged with the payment of such rents or fee farms, and chargeable to the distress of the said testator, so long as the said lands, tenements, or hereditaments continue, remain, and be in the seisin or possession of the said tenant in demesn, who ought immediately to have paid the said rent or fee farm, so being behind, to the said testator in his life, or in the seisin or possession of any other person or persons claiming the said lands, tenements, and hereditaments, only by and from the said tenant by purchase, gift, or descent, in like manner and form as their said testator might or ought to have done in his life-time, and the said executors and administrators shall, for the same distress, lawfully make avowry upon their matter aforesaid."

rears due in the testator's life-time.

1 Leon. 302; Cro. El. 805; Cro. Car. 471; 2 Vern. ca. 550.

Redemption money paid in Wales and the Marches.

"II. Provided alway, that this act, nor any thing therein contained, shall not extend to any such manor, lordship, or dominion in Wales, or in the Marches of the same, whereof the inhabitants have used, time out of the mind of man, to pay unto every lord, or owner of such lordship, manor, or domain, at his or their first entry into the same, any sum or sums of money, for the redemption and discharge of all duties, forfeitures, and penalties, wherewith the said inhabitants were chargeable to any of their said lords, ancestors, or predecessors, before his said entry."

2 Leon. 33; Vaugh. 415.

The husband's remedy for rent due in the right, and in the life of his wife.

"III. And further be it enacted by the authority aforesaid, That if any man which now hath, or hereafter shall have, in the right of his wife, any estate in fee simple, fee tail, or for term of life, of or in any rents or fee farms, and the same rents or fee farms now be, or hereafter shall be due, behind and unpaid in the said wife's life; then the said husband, after the death of his said wife, his executors, and administrators, shall have an action of debt for the said arrearages against the tenant of the demesn that ought to have paid the same, his executors or administrators; and also the said husband, after the death of his said wife, may distrain for the said arrearages, in like manner and form, as he might have done if his said wife had been then living, and make avowry upon his matter as is aforesaid."

Co. pl. f. 119. Vaugh. 38.

4 Co. 51. Co. Lit. 351. b. Goldsb. 30, pl. 1.

The remedy for a rent, the estate whereof dependeth upon another's life being dead.

"IV. And likewise it is further enacted by the authority aforesaid, That if any person or persons which now have, or hereafter shall have, any rents or fee farms for term of life or lives, of any other person or persons, and the said rent or fee farm now be, or hereafter shall be due, behind, and unpaid in the life of such person

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

or persons for whose life or lives the estate of the said rent or fee farm did depend or continue, and after the said person or persons do die; then he unto whom the said rent or fee farm was due in form aforesaid, his executors or administrators, shall and may have an action of debt against the tenant in demesn, that ought to have paid the same when it was first due, his executors and administrators, and also distrain for the same arrearages upon such lands and tenements out of which the said rents or fee farms were issuing and payable, in such like manner and form as he ought or might have done, if such person or persons, by whose death the aforesaid estate in the said rents and fee farms was determined and expired, had been in full life and not dead; and the avowry for the taking of the same distress to be made in manner and form aforesaid." (*Vide infra*, Vol. 4, p. 348.)

1 Anders. 47. 3 Leon. 59. 5 Co. 118. 7 Co. 39. 2 Leon. 153. Moor, 625. pl. 858. Co. Litt. 162. a.

Remedy for executors or administrators at common law, for arrears incurred in testator's lifetime.

By the common law, the heirs, executors, or administrators of a man seised of a rent-service, rent-charge, rent seck, or fee farm, in fee-simple, or fee-tail, had no remedy for the arrears incurred in the life of the owner of such rents. But now, by the above statute, a double remedy is given to the executors or administrators, either to distrain or to have an action of debt. Co. Litt. 162. a. And it seems that an executor of an executor is within the equity of the act. Off. Ex. 258. So, at common law, if a *feme sole*, seised of a rent in fee, &c., which was behind and unpaid, married, and the rent became behind again, and the wife died; the husband, by the common law, could not have the arrears grown due before the marriage; but for the arrears become due during the coverture, the husband might have an action of debt by the common law. But now this statute gives the husband the arrears due before marriage, and a double remedy for the same, that he may distrain for the arrears grown due during the coverture. So it gives him that which he could not have before, and further remedy for that which the common law gave him; and so it has been adjudged. *Ognel's case*, 4 Co. 51 a.: *Sharp* v. *Poole*, N. Bendl. 263, pl. 273; Co. Litt. 162. b.

For husband for arrears in right of his wife.

Conusee of tenant for life of a rent-charge not within the statute.

Tenant for life of a rent-charge confessed a judgment, which was extended by *elegit;* tenant for life died, conusee distrained, and in replevin avowed for the arrears incurred in the life of tenant for life; and upon demurrer the distress was held to be bad, and not warranted by the statute. 1. Because the case of the conusee is not enumerated. 2. Because he comes in the *post*, and not under the tenant for life. Bull. N. P. 57. But he might have debt. *Pool* v. *Neel*, Sid. 28, 29; 18 Vin. Abr. 545.

Executor of

But the executor of a grantee of a rent-charge for years, deter-

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

minable on a life or lives, is not within this statute. *Pool* v. *Duncomb*, Bull. N. P. 57. Nor does the act extend to a quit rent issuing out of copyholds; *Appleton* v. *Doiley*, Yelv. 135; but see Carth. 91; where, by *Eyre*, J., this point is doubted. 2 Bac. Abr. 282; *margine*, *Debt* (C). Lord *Coke* says, if a man make a lease for life, or a gift in tail, reserving a rent, this is a rent service within the statute; Co. Litt. 162. b.; from whence it may be inferred, that he thought that a rent reserved upon a lease for years was not within it: and I apprehend, says Mr. Justice *Buller*, N. P. 57, that it is not, for the landlord is not tenant in fee, fee-tail, or for life, of such a rent; and it is the executors of such tenants only who are mentioned in the act. [And so it was held in the cases of *Prescott* v. *Boucher*, 3 B. & Ad. 849: *Jones* v. *Jones*, Id. 967; overruling *Powell* v. *Killich*, 1 Selw. N. P. 678, 8th Ed. But a remedy has been given to the personal representatives in such cases by the recent statute 3 & 4 Will. 4, c. 42, s. 37, stated *infra*, Vol. 4, p. 349.]

grantee for years not within the statute.

Distress the best remedy,

The distress is a more plain and certain remedy than the action of debt; for the action of debt must be brought against the persons who took the profits when the rent became behind, or against their executors or administrators; but the distress may be taken upon the land, be it either in the tenant's own hands, or in the hands of any other who claims by or from him, (that is, by interpretation, under him), by purchase, gift, or descent. And these words, *claiming only by and from him*, are to be understood claiming only from or under him by purchase, gift, or descent, and not paramount or above him; as the lord by escheat claims not under the tenant by purchase, gift, or descent, but by reason of his seigniory, which is a title paramount. Co. Litt. 162. b. For other cases not within the statute on a like ground, see Cro. Eliz. 332; 1 Leon. 302; 2 Vern. 612. See also on the extent of this branch of the statute, *Edridge's case*, 5 Co. 118.

because it may be made on those claiming under the grantor.

A power of distress follows the land in the hands of any common person claiming under the grantor of the rent-charge.

Therefore, wherever a rent-charge can be distrained for, the remedy follows the land in the hands of any succeeding tenants claiming under or through the person who granted the rent-charge; or if the tenant be dead, the goods of the deceased may be distrained in the hands of his executor or administrator for the rent accrued before and after his death. Bradby, 112: *Braithwaite* v. *Cooksey*, 1 H. Bla. 465. Thus, in replevin, the defendant avowed for a rent-charge due in the year 1660, and afterwards he distrained and avowed for other part of the rent-charge due a year before, viz. *anno* 1659; and this distress was taken of the cattle of another person, who was then tenant of the lands: and upon demurrer, the question was, whether he was estopped to avow for the arrears of the rent-charge before

A rent-charge may be distrained and avowed for, although there has been a previous dis-

the year 1660? And it was adjudged that he was not; but that if he had given an acquittance to the last day of payment, he could not claim the rent due before, because that was his voluntary act and deed, and he shall be estopped to claim against it; but in an avowry for rent, he may avow for all or part, at his pleasure; and the first avowry shall not bar him from avowing for rent before. *Palmer* v. *Stabick*, Sid. 44, pl. 1; 9 Vin. Abr. 157, pl. 24. So in another state of this case, in covenant against an executor for the arrears of a rent-charge due long before; *Powel*, J., said, an avowry for the arrears of a rent-charge in 1679 is no estoppel to bring covenant for the arrears in 1678. And he said there is a diversity, where the acquittance for the last rent is under the plaintiff's hand and seal, and where it is under his hand only; for in the first case it is an estoppel, in the latter it is only evidence; *Fountain* v. *Gnales*, Comb. 59; but it is strong presumptive evidence that the former rents have been regularly paid. Phillips on Evidence, 155, 5th Ed.; Gilb. on Debt. p. 434, Ed. 1760, B. 3, c. 2; 1 Selw. N. P. 598, 5th Ed. So, if a man give a receipt in full of all demands, it is presumptive evidence that there were no debts standing out; and the other party will be allowed to prove the contrary: but how is he to prove a negative, viz. that the former rent has not been paid, is not stated. However, if the receipt in full of all demands be under hand and seal, the presumption is so strong, that the law admits of no proof to the contrary. Gilbert on Evidence, 158, 4th Ed. 142, Sedgw. And in *Palmer* v. *Stanage*, 1 Lev. 44, (apparently the same case as *Fountain* v. *Gnales*), *Foster*, C. J., said, that the avowry for rent due at a latter day, cannot be a discharge of rent due at a former day, any more than a recovery in an action of debt for rent due at a latter day, can be a bar in an action of debt for rent due at a former day. [In the case of *Cupit* v. *Jackson*, M'Clel. 495, it was held, that a rent-charge could not be discharged by parol, either as to the arrears or the accruing payments, for a discharge of the arrears would be a discharge of a right of action, and a discharge of the future payments would be a discharge of a specialty.

distress and avowry for rent becoming subsequently due;

or an action of covenant may be brought;

but an acquittance under hand and seal is an estoppel.

A recovery in an action of debt for rent due at a latter day, is no bar in an action of debt for rent due at a former day.

So, if a man grant a rent-charge to A., for the life of B., and let the lands to C. for life, the remainder to D. in fee; the rent is behind for many years; B. dies, and afterwards C. dies; A. may distrain D. in remainder for all the arrears, by the latter branch of the statute 32 Hen. 8. And this diversity arises from the difference between the former branch and this latter; and which was so expounded and adjudged in *Edridge's case*, 5 Co. 118; the latter clause giving the lesser estate the greater remedy.

Remainderman claiming under grantor of a rent-charge, subsequent to the grant, liable to a distress.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

So, if a tenant for life grant a rent-charge, and afterwards surrender his estate to the lessor; although the estate charged be merged, and the lessor is not in by him, yet he shall hold it charged. Co. Litt. 185. a., 338. b., 233. b.; Preston on Merger, 447, 456, 471.

Surrenderor liable to a distress for rent-charge granted by surrenderee.

So, if a rent be granted out of two parts of certain land, and afterwards a lease be made of the two parts to A.; and the other part also comes to A., by another lease from him who has the third part, the cattle of the lessee may be taken for this rent. 1 Roll. Abr. 670, pl. 34: *Newman* v. *Moore*, Hob. 80, 4th Ed. So, where a stranger claims under the grantor, after the grant of a rent-charge, his cattle are liable to a distress: as the cattle of a lessee, where the demise was after the grant. Com. Dig. *Distress* (B. 2).

Lessee of the whole lands under several lessors, liable to a rent-charge granted by one of them.

Either of several tenants of lands subject to a rent-charge may be distrained; or any part of the lands, if they lie in several counties.

So, if a rent-charge issue out of land, which is in the hands of several men, a distress may be taken for the whole rent upon the possession of one; for all the rent issues out of every part. Roll. Abr. 671, pl. 12. So, if a rent-service or a rent-charge issue out of land lying in several counties, a distress for the whole may be taken in one county. 1 Roll. Abr. 671, pl. 10 and 11. See *Wright* v. *Rumball*, 1 Ld. Raym. 55.

Distress on goods of stranger.

[In Com. Dig. *Distress* (B. 2), it is said that for a rent-charge generally the cattle or goods of a stranger cannot be distrained, citing 15 H. 7, 17. b, *dub.:* 1 Roll. 669, l. 25; *contra* 1 Roll. 668, l. 13, *qu.*, and 1 Roll. 672, l. 20, *R. acc.* However, it is quite clear that the goods of a stranger, who is not entitled paramount the grantor, are liable to a distress for a rent-charge; Vin. Abr. *Distress* (I.) pl. 27: *Kemp* v. *Cruwes*, 2 Selw. 1575; 2 Wms. Saund. 290, n. (7): *Saffery* v. *Elgood*, 3 Nev. & M. 346; 1 Ad. & El. 191; and that whether the actual tenant of the land on which the stranger puts his goods claims under the grantor or not. *Saffery* v. *Elgood.*]

What goods of a stranger are exempted from a distress.

To exempt the goods even of a stranger from a distress for rent, it is necessary that they should be on the premises demised under peculiar circumstances: as for the purpose of trade, in which case, on account of the public advantage of trade, they are privileged from distress: or the place in which they are found should be itself privileged for the like reason of general benefit; as a market, fair, or public inn. Bradby, 115, 208; 3 Bla. Com. 8; Gilb. Distresses, 39, 3rd Ed.: *Gorton* v. *Falkner*, 4 Term Rep. 565.

Goods in the possession of the law, privileged from a distress.

It is a rule, that neither the goods of the tenant or a stranger can be distrained for rent, if they are already in the custody of the law; as if taken damage feasant, or under an execution, unless such execution be already satisfied: *Harwell* v. *Barwell*, Sir W.

Jones, 456: because, in these cases, an interest in the goods is vested in third persons by the act of law, which cannot be divested, unless by their own default. Bradby, 115. But if goods remain on the demised premises after a fictitious bill of sale made of them under an execution, they are liable to be distrained as before. *Smith* v. *Russell*, 3 Taunt. 400. And under 8 Anne, c. 14, the landlord is entitled to rent to the extent of one year, although there be an execution, excepting as against the crown. [*Vide infra*, Vol. 4, p. 353.]

Distress by the lord of an ancient seigniory for services.

As to a landlord's right of distraining a stranger's cattle which escape, *vide infra*, Vol. 4, p. 352. It seems, the lord of the fee for an ancient rent may distrain cattle which come in by escape, although they have not been *levant* and *couchant*. 1 Ld. Raym. 167, Argu.: 9 Vin. Abr. 144, n.; 1 Roll. Abr. 668, pl. 2 and 3. However, it seems to be admitted, that the lord may distrain them after they have been *levant* and *couchant*, without giving notice to the owner of the cattle; Doctor and Student, Dial. I. ch. 7, p. 24, 18th Ed.; Wms. n. 2 Saund. 290, (7); Hargr. n. Co. Litt. 47. b., (3); Bradby, 115; although it be in default of the fences, which the tenant of the land ought to maintain, because the lord of the seigniory has nothing to do with the repairing of the fences; but the owner may prevent the distress, by pursuing and retaking the cattle before the distress be made. 1 Ld. Raym. 168, Argu.; Gilb. Distresses, 46, 3rd Ed.

By a grantee of a rent-charge. Definition of levancy and couchancy.

It is said, that the grantee of a rent-charge may distrain the cattle of a stranger, after they have been *levant* and *couchant;* 2 Leon. 7, 8, *i. e.* the stranger's cattle must be so long resident on the lands out of which the rent-charge issues, that notice may be presumed to the owner of them; that is, they must be *lying down* and *rising up* on the premises, *for a night and a day*, without pursuit being made by the owner of them; Gilb. Distresses, 47, Hunt's Ed.; and, it is said, although no notice be given to the owner; because the grantee having nothing to do with the fences, there is no default in him as there is in a landlord, and that therefore such notice is not necessary. *Kimp* v. *Cruwes*, 2 Lutw. 1580; Wms. n. 2 Saund. 290, (7); Hargr. n. Co. Litt. 47. b., (3). But it is rather singular, that the grantee of a rent-charge should be in a better situation as to taking a distress, then the person who granted him the power of distress.

Equity will sometimes grant relief in favour of a stranger, when his cattle are distrained.

In a case where a rent-charge had been in arrear for twenty years, and cattle, escaping out of the adjoining grounds, had been distrained for the arrears, the distress was relieved against in equity. *Broden* v. *Pierce*, 2 Vern. 131; *vide infra*, Vol. 4, p. 352.

Persons having a joint interest in lands with others, are not liable

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

A grant of a rent-charge by one joint-tenant is good as to him, and his goods, and the goods of those claiming under him may be distrained.

to a distress for a rent-charge granted by the others: thus, if two joint tenants be seised of an estate in fee-simple, and one of them grant a rent-charge by deed to another person out of that which belongs to him, in this case, during the life of the grantor, the rent-charge is effectual; but after his decease the grant of the rent-charge is void, as a charge on the land; for he who has the land by survivorship shall hold the whole land discharged; because he who survives, claims and has the land by survivorship under the feoffor, &c., which is by a title paramount the grant of the rent-charge, and has not, nor can claim any thing by descent from his companion. Litt. s. 286; 3 Bac. Abr. 697, *Joint tenants,* &c. (I), 5. However, if he who made the charge be the survivor, it is good for ever. Co. Litt. 184. b. It is on the principle of the above case, that if there be two joint tenants in fee, or for lives, and one of them make a lease for years, reserving a rent, and die, the surviving joint tenant shall have the reversion by survivorship; but he shall not have the rent, because he claims to be in the estate from the first feoffor, which is paramount the rent. Dyer, 187 a., (5); Finch's Law, 13 Pickering's Ed.; Co. Litt. 185. a.; 1 Co. 96 a.; 3 Bac. Abr. Gwill. Ed. 696, *Joint tenants, &c.* (I) 3, 3; Noy's Max. 4, 19, 9th Ed. But if there are several joint tenants, and one grant a rent-charge out of the land, the grantee may distrain the cattle of the grantor, but he cannot distrain the cattle of the other joint tenants; although he may distrain the cattle of a stranger that come upon the land. 1 Roll. Abr. 669, pl. 25, 26, 27; 9 Vin. Abr. 145: [*Saffery* v. *Elgood*, 3 Nev. & M. 346; 1 Ad. & El. 191.]

If the joint-tenant who granted the rent-charge convey his estate to the other joint-tenants, their goods may be distrained.

Rolle says, if there be several joint tenants, and one grant a rent-charge, and afterwards leases his part to the other joint tenants *at will,* and they occupy the whole, yet their cattle cannot be distrained for the rent; because the lease at will is void, inasmuch as a joint tenant ought to occupy *per my et per tout* by the law. 1 Roll. Abr. 669, pl. 29. Brook's Abr. pl. 68, Ed. 1573, cites the same case, 11 Hen. 6, 28, where it is in a manner agreed, that where five joint tenants are, and two charge the land with rent, and lease their part to one of the other three, and the grantee distrain him, that this is good; for, by taking the lease of the part of the grantors he shall be in the same plight as the grantors themselves should be; but it would be contrary, if he had occupied his first part only, *i. e.* not accepted the lease. Rolle adds, but admitting the lease at will to them to be good, then their cattle may be distrained for the rent; because they come to the third part under the charge, and they shall be in the same plight that the grantor himself was. 1 Roll. Abr. 669, pl. 30; 9 Vin. Ab. 146.

But if there be two joint tenants in fee, and one of them grant a rent-charge out of his part, and afterwards release to his joint companion, and die, he shall hold the land charged, for he is out of the reason and principle stated by Littleton; because he claims not by survivorship, inasmuch as the release prevented the same. So, if A., B., and C. be joint tenants in fee, and A. charge his part, and then release to B. and his heirs, and die, the charge is good for ever; because, in that case, B. cannot be in from the first feoffor, because he has a joint companion at the time of the release made, and several writs of *præcipe* must be brought against them. Co. Litt. 185. a.; Litt. s. 304; Bro. Abr. *Alienations*, pl. 31. Although the release of one joint tenant to the residue of the joint tenants makes no degree in supposition of law, neither is there any several estate between them; but the estate of him that releases is, as it were, extinguished and drowned in their estate and possession, so as one *præcipe* lies against them, yet shall they hold the land charged as aforesaid. Co. Litt. 185. a. To avoid the above questions, whenever a joint tenant charges his estate with a rent-charge, he should sever the joint tenancy.

To avoid questions, the joint tenancy should be severed.

But if there be two coparceners of tenements in fee-simple by the common law, Litt. s. 286, or of copyholds, according to the custom, Co. Litt. 185. a., and before any partition made, one of them charge by deed that which to her belongs, with a rent-charge, &c., and afterwards dies without issue, by which that which belongs to her descends to the other coparcener, in this case the other parcener shall hold the land charged, &c., because she came to this moiety by descent as heir. Litt. s. 286.

Where a coparcener claims the share of a deceased coparcener as heir, she is liable to a distress for a rent-charge, granted by the deceased.

Where there is in one of the coparceners a unity of seisin or possession of the rent and the land on which it is charged, there, for the benefit of the coparcener entitled to the rent, the law apportions the rent, by extinguishing only so much of it as is proportionate to her share in the land: but still the right of distress is in some degree restrained. So that, if a woman be seised of a rent-charge and afterwards the lands charged descend to her and her two sisters in coparcenary, only a third part of the rent is extinct by such unity of estate: but yet the coparcener who has the rent cannot distrain on the land for the other two parts of the rent, until partition be made; because, until that time, she is seised with her two sisters, *per my et per tout* in the land. Bro. Abr. *Distresse*, pl. 37, 64; Co. Litt. 163. b., 169. a., 175. b., Bradby, 57. So, if a man seised of four acres of land have issue, a son and a daughter by one marriage, and two daughters by another marriage,

On a unity of seisin in a rent and in the land out of which it issues, coparcener cannot distrain until partition.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

and grant a rent-charge out of his land to his son in fee, and the son die without issue in the life of his father, and on the death of the father the land descend to the three daughters, the eldest daughter cannot distrain for the two parts of the rent, until partition be made. Bro. Abr. *Extinguishment and Suspension*, pl. 31.

Tenant of the land claiming by a title paramount is not liable to a distress.

But where the tenant of the land holds by a title paramount the distress, he is not liable to it: [*Saffery* v. *Elgood*, 3 Nev. & M. 348:] so that, if a man be seised of a rent-charge by *prescription*, issuing out of a manor, it seems he cannot distrain the cattle of the copyholders of the manor, if they have not been accustomed to be distrained: because they are in by prescription also, and therefore their title is as high as that of the owner of the rent. *Cannor* v. *Turner*, 1 Roll. Abr. 669, pl. 32, 9 Vin. Abr. 146. But a *dubitatur* is added. However, it is said in the same case, it is clear, if the owner of the rent has it by *grant*, or otherwise, and not by prescription, the cattle of the copyholders cannot be distrained for it. 1 Roll. 669, pl. 33; [3 Nev. & M. 348]. So, if a man seised in fee make a lease for life, and afterwards grant a rent-charge, if the grantor's cattle come upon the ground, the grantee may distrain them, although he cannot distrain the tenant in possession, because he holds by a title older than the grantee. Brownl. 32; 9 Vin. Abr. 148, pl. 49. So, if a man lease at will, and afterwards grant a rent-charge, (admitting this does not determine the will, which it seems it does not, as such demises are now generally considered as tenancies from year and year), the grantee cannot distrain the cattle of the tenant at will, because he was in before the charge, and therefore the tenant of the freehold cannot charge him with a distress before the will be determined. 1 Roll. Abr. 669, pl. 31. But these two last-mentioned cases seem to have been derived from the principle of there being no privity between the tenant and grantee without attornment: and it seems, that since the statute 4 Anne, c. 16, the tenant would be liable to be distrained for non-payment of so much of the rent of the lands as is unpaid when he receives notice of the grant of the rent-charge, and for so much rent as becomes due afterwards. *Vide ante*, p. 24.

Wife surviving, not subject to a distress for rent-charge granted by her husband out of her term for years.

And if a man be possessed of lands for a term of years in the right of his wife, and grant a rent-charge, and die, the wife shall avoid the charge, because she does not claim under her husband; but if the husband survive the wife, the charge is good during the term. Co. Litt. 184. b. But the husband's alienation of the term itself, or of any part of it, binds the wife surviving. Hargr. n., Co.

Litt. 184. b., (6); Co. Litt. 351. a. See the reason of this difference, Co. Litt. 185. a.; and see further, 1 Bac. Abr. 476., Gwill. ed.; *Baron and Feme*, (C.) 2.; Butl. n., Co. Litt. 351. a., (1); 1 Rop. Husband and Wife, 173. Therefore, when a husband charges an annuity on his wife's term for years, he should also absolutely assign the term, upon trusts for securing the annuity.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Annuity, how best charged on wife's term.

However, in all cases, the privity of estate must remain; and therefore, if one seised in fee of a rent grant it to another in fee, or re-grant the rent back to the grantor, either in fee, in tail, or for life, he cannot afterwards distrain for the arrears; because he has by his own act destroyed all the former privity of estate between himself and the tenant; and in respect to it, he has no more right than any stranger to come upon the land, after such transferring over, or re-granting the rents. *Et sic de similibus. Ognel's case*, 4 Co. 49; *Dixon* v. *Harrison*, Vaugh. 40, 43. And it was agreed, *per totam curiam*, if A. have a rent-service, or rent-charge in fee, or for life, and the rent be in arrear, and afterwards A. grant over the rent to another, and the tenant attorn, which before the statutes 4 Anne, c. 16, s. 9, and 11 Geo. 2, c. 19, s. 11, was in these cases necessary; and afterwards A. die, his executors are not within the 32 Hen. 8, c. 37; for, by the grant over, the arrears were lost, aad were not due to the testator at the time of his death, as the statute speaks; the words being, "in as large and ample manner as the said testator might, and ought to have;" and after the grant, the testator himself, nor any other, could *distrain*, or have any remedy for the arrears: also, in the clause next preceding touching the *action of debt*, the words are, "unto whom any such rent or fee-farm is or shall be due, and not paid at the time of his death:" so that the act gives no remedy when the testator himself, by his own act, has dispensed with the arrears; but only when they were due to him at the time of his death, and by the act of God become remediless. *Ognel's case*, 4 Co. 50 b., Vaugh. 40, 41. Nor can the arrears of a rent-charge, due at the time of the assignment, be assigned, because they are a mere chose in action. Bradby on Distresses, 52; Vaugh. 40. Such an assignment of the arrears is not, however, wholly void; for, where in a replevin the defendant avowed for a *rent-charge and arrears thereof*, assigned by a bargain and sale; and issue being taken on the assignment, the jury found, that they were so assigned: and thereupon verdict for the defendant. On its being moved in arrest of judgment, that the jury had found a void assignment, and therefore

After assignment or re-grant, grantee cannot distrain;

nor his executors;

nor an assignee of arrears.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

but assignee may distrain for what becomes due after assignment.

a repleader should be awarded, the Court seemed to think that the objection could not prevail after verdict. *Guilliams* v. *Munington*, Sir Tho. Raym. 200. But the assignee may distrain for a rent-charge which becomes due after the assignment; *Maund's case*, Co. Litt. 144. a.; 7 Co. 56, French ed., 1671, 28 b., second paging, Serjt. Wilson's ed. (*a*). But where a grantee of a rent-charge in fee levied a fine of it, to the use of himself and wife in tail, he had so far the same estate in the rent, as to be capable of distraining for the arrears due before the fine levied. *Witherhead* v. *Harrison*, Sir Tho. Jo. 3; and see further, Vaugh. 43, *et seq.*

The grantee may distrain, though the distress be limited to a stranger for his benefit.

If the distress be limited to a stranger for the benefit of the grantee of the rent, yet the grantee himself may distrain for it; for the stranger is his servant in this, and what he may do by his servant, he may do himself; 2 Roll. Abr. 425 (G.), pl. 3; 18 Vin. Abr. 479: and Mr. Powell, copying Gilb. on Rents, 42, says, in relation to this case, what a man may do by one servant he may do by any other; 1 Pow. on Contracts, 372: but it seems only to extend to the special case of the king, on account of his prerogative; Co. Litt. 147. a., 7 Co. 23 a., Com. Dig. *Rent* (C. 8); which, in these cases, is more extensive than the powers of a subject; Noy's Max. 42, 134, 9th ed.; *Mountjoy's case*, 5 Rep. 4; however, these prerogative powers are not extended to the grantee of the king; Bro. Abr. *Distresse*, pl. 48; excepting in the case of vendees of fee-farm rents of the Crown, under 22 Car. 2, c. 6, who may distrain upon all the lands of the original grantor. Bradby, 93.

An annuitant with a power of distress, may distrain for arrears, though a term be vested in himself, to secure the payment.

In replevin, the defendant made cognizance as bailiff of Nathaniel Pigott, Esquire, upon a distress for £750 arrears of an annuity or yearly rent; stating, that on the 5th and 6th of January, 1776, the plaintiff, for valuable consideration, did, by lease and release, convey to Sir Michael le Fleming and James Rodney, and their heirs, among other things, the lands in which the distress was taken, to the use of the said Pigott for *ninety-nine years*, if he so long lived, on the trusts thereinafter mentioned, and subject thereto, to the use of the said Ann Fairfax, the plaintiff, for her life, with divers remainders over. The *trust* of the term is declared to be, that the said Pigott might yearly, *during his life*, receive and take thereout

(*a*) The *seventh* part of Mr. Serjt. Wilson's English edition of Lord Coke's Reports, as well as some of the other editions, commences a new paging after page 28, which causes much trouble: this error has been often exclusively charged on the Irish edition; and it has been the foundation of a general prejudice against Irish editions of other law books.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

an annuity or rent of £250 by equal half-yearly payments, at Michaelmas and Lady-day, *with power to enter and distrain for arrears;*—and then justifies for a distress for £750 for three years' arrears due Lady-day, 1779. To this cognizance the plaintiff demurs, and the defendant joins in demurrer. For the plaintiff, it was objected, that the ninety-nine years' term being vested in Pigott, he could not distrain upon lands in his own legal possession; though he might bring an ejectment. But, by *Blackstone*, J., (*absente De Grey*, C. J., and *Gould*, J.)—"I look upon Mrs. Fairfax, during the ninety-nine years' term, to be, by her own act and consent, a mere *under tenant* to Pigott, at the rent of £250 per annum, for which he has paid a valuable consideration. *To this rent a distress is incident by law, exclusive of the clause in the deed.* So that there is no colour for the objection. *Nares*, Justice, of the same opinion, for this and many other reasons." Judgment for the cognizor. *Fairfax* v. *Gray*, 2 W. Bl. 1326.

4 Geo. 2, c. 28, s. 4, Serjt. Hill's MS. notes to W. Blac. Rep.

The late Mr. Serjeant Hill, referring to the above case, says, "Though the opinion is given there exclusive of the clause in the deed, yet, as there was a clause for distress in the deed, the opinion was extra-judicial. Serjeant Hill's MS. notes to 2 Vin. Abr. 516; 9 Vin. Abr. 125; 15 Vin. Abr. 362, in Lincoln's Inn library: and from the learned serjeant's manuscript notes to Sir Wm. Blackstone's Reports, he appears to have thought that the learned Judge referred to the 4 Geo. 2, c. 28; but he evidently meant that Mrs. Fairfax's occupation was a mere tenancy under Mr. Pigott. *Sed quære.* [*Vide infra*, Vol. 5, p. 350.]

Rents seck as well as rents service and rents charge, may be recovered by distress.

The remedy by distress is, by the common law, incident to a rent-service; but to have constituted a rent-charge, a power of distress must have been expressly given by the deed; 6 Bac. Abr. 34, *Rent*, (K); by the common law, no distress was incident to a rent seck; but that remedy was given by the statute 4 Geo. 2, c. 28, s. 5, stated *infra*, Vol. 4, p. 346.

A rent granted since the statute *quia emptores*, and before this statute, must be brought within it in an avowry.

For a rent, without an express clause of distress, granted in fee since the statute of *quia emptores*, and before the passing of this statute, there cannot be a distress but under this statute; and therefore, in an avowry for such a distress, the case must be brought within it. *Bradbury* v. *Wright*, Doug. 627. Mr. Justice Blackstone says, "The statute 4 Geo. 2, c. 28, extended the same remedy to all rents alike, and thereby in effect abolished all material distinction between them. So that now we may lay it down as an universal principle, that a distress may be taken for any kind of rent in arrear; the detaining whereof beyond the day of payment is

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

an injury to him that is entitled to receive it." 3 Bla. Com. 6, 7. This must, however, be understood with some limitation; for, at the common law, it was not every reservation, though *nominally of rent*, which constituted a *rent*, properly so called: thus, at common law, a *rent* could not issue out of a mere chattel. *Vide infra*, Vol. 4, p. 346.

What is distrainable within 4 Geo. 2, c. 28, s. 4.

A rent cannot issue out of a chattel, but a term may be subjected to a distress by an express power.

[But a power of distress may be given to recover a quasi rent reserved or granted for years or for life out of a term of years, which power operates in all respects like a power granted by the owner of the fee, and not merely by estoppel against the grantor.] Thus, in *Butt's case*, 7 Co. 23, Wilson's ed. 51, French ed., in replevin, between *Fish* and *Butt*, the case in effect was, one seised of Black-acre in fee, and also possessed of White-acre for years, by his deed granted a rent out of both to A., to have and perceive to him for the term of his life, *with clause of distress in both;* and for rent behind, A. distrained, and avowed in White-acre; and if the distress were well taken or not, was the question. And it was agreed by the whole Court that the distress was well taken. And in this case these points were resolved:—1. That if lessee for years of a carve of land grant to another a rent out of the said carve, for the life of the grantee, that is a good charge during the term, if the grantee so long live; for the grant shall be taken more strong against the grantor, and shall not be void, when by any construction it may be made good (*vide* Plowd. Comment. in *Welchden's case*); and, in such case, the grantee has but a chattel. So, if the lessee for years grant the carve of land to another for the term of his life, he has the whole term if he live so long, as well as in the case of a devise. 2. It was resolved, that when a rent is granted out of land in fee, and out of a term for years to have and perceive to the grantee for the term of his life, that is, as an estate of freehold, according to the purport of the deed, cannot issue out of the term for years, but out of the land which the grantor hath in fee-simple only; because the freehold of the rent can issue out of that, and not out of the chattel. And one entire rent cannot be a freehold out of Black-acre, and a chattel out of White-acre. And to make two rents, when one only is granted by one to another, would be, in this case, injurious; and the bargain and mutual agreement of the parties cannot charge such thing with rent which is not chargeable by the law, as out of an hundred or advowson, 30 *lib. Assisarum*, pl. 5; out of a fair, 14 E. 3: *scire facias*, 122, *the Earl of Kent's case;* neither can a rent be granted or reserved of any estate of freehold out of any other hereditament which is not manurable, either in posses-

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

sion, reversion, or by possibility, but is *hereditamentum incorporeum;* for *pacta privata non derogant juri communi:* and in an assize they cannot be put in view, nor can any distress be taken in them. But in the case at bar, White-acre is *hereditamentum corporeum,* and manurable; but, for the smallness and incapacity of the interest that the grantor has in it, this rent of freehold cannot issue thereout, but shall issue only out of the land in fee-simple. And in the case at bar, in an assize brought of this rent, the land in fee shall only be put in view, and if the grantee accept a lease or grant of White-acre, it will not suspend his rent. 3. It was resolved, that White-acre should, during the term, be subject to the distress of the grantee for the rent during the years, although the rent does not issue thereout, as in 41 (46) Ed. 3, 14, when land is charged with a rent in fee, goods and chattels may be bound to the distress. And it was said, forasmuch as White-acre is only charged with distress, and the rent does not issue thereout, if the grantee take a lease of any part thereof, it is no suspension of the distress but that he may distrain in the residue; for it is not issuing out of the land, but to be taken on the land: as, if I have a warren in another's land, and take a lease of parcel of the land, although the land be charged with warren, yet, forasmuch as it doth not issue out of the land, it is not any suspension. But as the avowant pleaded the grant out of the term for years only, and concluded *virtute cujus* he was seised *in dominico suo ut de libero tenemento pro termino vitæ suæ,* which is repugnant to have a freehold out of a term for years; judgment was given against the avowant, for insufficient pleading. [*Saffery* v. *Elgood,* 3 Nev. & M. 346; 1 Ad. & El. 191; S. P.]

Distress for rent.

Grant of rent in one parcel of land and distress in another.

In the grant of a rent-charge, it appears, *ante,* p. 6, that the rent may issue out of one parcel of land, and the distress be reserved in another; and in this case, whether the lands lie within the same or different counties, it seems that the distress can be taken only on the land in which it is reserved. Litt. s. 221. But both parcels of land are charged, one with the rent, and the other with a distress for the rent; one issuing out of the land, and the other to be taken upon the land. Co. Litt. 147. a. In *Butt's case,* 7 Co. 24 a; 52, French ed., it is said, that as the parties have expressly limited out of what land the rent shall issue, and in what land the distress shall be taken, the law will not make an exposition against the express words and intent of the parties; when it may stand with the rule of law, *quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba expressa fienda est.* Co. Litt. 147. a.; Wingate's Maxims, 24; 2 Saund. 167; 14 Vin. Abr. 58, pl. 6; 2 Roll. Abr.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

425, (E) pl. 2; 18 Vin. Abr. 478, pl. 2. *Sed quære*—Whether the 4 Geo. 2, c. 28, s. 5, has not altered the law in this respect, and enabled the grantee in such a case to distrain in both parcels of land, unless the parcel, out of which the rent is issuing, be expressly exempted from the distress?

Devise of a rent.

When a testator had a power to distrain for a rent at common law, and devised the rent, the devisee could distrain without attornment: but if the devisor had not that power, he could not confer it on his devisee, according to the rule in *Finch's case;* 5 Co. 113; Co. Litt. 309. b.; *Nemo potest plus juris ad alium transferre quam in ipso est: Nil dat quod in se non habet. Long* v. *Buckeridge,* 1 Str. 109, 111. Where a rent for an estate of freehold was devised out of a freehold without any estate in the land, it seems formerly to have been necessary for the devisor to give a power of distress; that is, in effect to make it a rent-charge, in order to entitle the devisee to distrain. *Gough* v. *Hayward,* Bridgm. 53. And although this is not now necessary, as a *freehold* rent devised out of a *freehold* must be considered as a rent seck, to which the statute 4 Geo. 2, c. 28, s. 5, has extended the right of distress; Bradby, 89; [*Buttery* v. *Robinson,* 3 Bingh. 392; see also *Saward* v. *Anstey,* 10 J. B. Moore, 60;] yet it is usual to give such an express power by the will since the statute.

Power of distress not necessary on creating a freehold rent by devise.

Difference between a devise and a bequest of a rent.

There is, however, one considerable difference between the devise of a freehold estate, or a freehold rent, and the bequest of a chattel interest: for a devise vests absolutely by the testator's will, but the interest of the legatee must await the executor's assent to the bequest; and therefore, before such assent, the interest remains in the executor, and consequently the legatee cannot distrain, although an express power of distress be given by the will. Toller's Law of Executors, 306, 307. This assent may be either express or implied; but it must relate to the particular subject of the legacy. Thus, if a lessee for years bequeath a rent to A., issuing out of the land, and bequeath the land to B., the executor's assent that A. should have the rent, is no assent that B. should have the land, because the rent and the land are distinct legacies. *Gough* v. *Hayward,* Bridgm. 55. But under special circumstances, an executor's assent to one legacy may enure to another; as if the case last mentioned be reversed; the executor's assent that B. should have the land, seems to imply his assent that A. should have the rent; for the necessity of the executor's assent is established with a view to creditors: now to them the land is equally unproductive, whether it passes to B. charged with the rent or not; for if the testator's estate were in-

Devise vests absolutely by the will;

but the executor must assent, either expressly or impliedly, to a bequest.

NATURED AND INCIDENTS OF ANNUITIES IN GENERAL.

debted, after this assent, to the bequest of the term, the term cannot be put in execution for this debt, but the assent of the executor is in him a *devastavit*. *Gough* v. *Hayward*, Bridgm. 55. And also, as it was the testator's intention that B. should hold the land subject to the rent to A., the executor's assent to B.'s having the land shall, in conformity to the will, be construed an assent to the legacy to A. Off. Ex. 237; Toll. Ex. 310: *Welchden* v. *Elkington*, Plowd. 521, S. P. 1 Roll. Abr. 620 (E), pl. 3; Godolphin's Orphans' Legacy, 360, 4th Ed. So, if a man bequeath a term to his wife during her widowhood, and if she marry, then a rent to her out of the land, with a clause of distress, Bridgm. 53, and make the wife executrix, and die, and the wife agree to the legacies, and afterwards marry, Rolle says it was adjudged that the rent shall rise to her well enough, though she once had the whole term in her as executrix, for this future rent shall not be extinct thereby: *Gough* v. *Hayward*, 1 Roll. Abr. 610, pl. 8; but it appears that there was no judgment given; Roll. Rep. 247, pl. 17, 368, pl. 23: *Gough* v. *Hayward*, 3 Buls. 121; and in Bridgman's Rep. it is said, the Court was equally divided on this point. Bridg. 56. See Godolph. Orph. Leg. 244.

Power of distress usually given on creating a fee-farm rent;

Although the statute 4 Geo. 2, c. 28, s. 5, has given a remedy by distress for recovering a fee-farm rent, as a rent seck, when there is no power of distress, yet as a distress is not incident to this rent by the common law, it is usual, since the statute, to give an express power of distress, and thereby make it a rent-charge. And it has been recommended to create the rent by way of declaration of use, rather than of reservation, 3 Pres. Abs. 54; in order to bring it within the stat. 27 Hen. 8, c. 10, s. 4, *ante*, 25, which renders an express power of distress unnecessary; although even in that case an express power of distress is usually given (*a*). And, since the statute of Geo. 2, in creating a rent for life or lives out of *freehold* lands, it is the almost invariable practice to give an express power of distress, although such a rent may be recovered by distress, as a rent seck, under the statute; Watk. Conv. 89, 2d ed. Pres. ed. 157. And although it is stated in 6 Bac. Abr. 6, Gwill. Ed.; 4 Bac. Abr. 337, 4th ed., *Rent* (A) 3, that if a man seised in fee grant a rent for *years* without a clause of distress, it is a rent seck, yet as (Litt. s. 215, 218: *Morris* v. *Prince*, Cro. Car. 520; Keilw. 104, pl. 11:

or a rent for life or lives out of freehold lands;

or a rent for years out of a freehold since the 4 Geo. 2, c. 28.

(*a*) [J.It is remarkable, that the practice of introducing such powers should have continued so long after the necessity for them has ceased. They have been discarded by many practitioners. It is well known that such powers are, at the present day, rarely introduced in leases.J.]

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Walsal v. *Heath*, Cro. Eliz. 656) the authorities cited do not support that proposition; and as the old law books never mention a rent seck for years, but always assume it to be granted in fee, in tail, or for life; Litt. s. 217, 218; 2 Roll. Abr. 423, (B); 18 Vin. Abr. 473; Com. Dig. *Rent*, (C. 9); and as an assize cannot be had for recovering a rent by a tenant for years, Com. Dig. *Assize* (B 5), but only lies for a rent-service, rent-charge, or rent-seck, when it is *de libero tenemento*, 8 Co. 46 a; *viz.* of an estate of freehold of inheritance; Com. Dig. *Rent* (D 1); *Assize* (B 2); and as the old books state, that, if the grantee were never *seised* of the rent, he is without remedy; Litt. s. 217, 341; 2 Roll. Abr. 424 (C); 18 Vin. Abr. 474 (C); Vaugh. 48; and as a seisin cannot be had of a chattel interest, but only a possession,—an express power of distress is invariably given on creating a rent for years, to be issuing out of a freehold estate. In creating a rent for life, or years, or for years determinable on a life or lives, to be issuing out of a chattel interest, it appears, *ante*, p. 40, that a power of distress is absolutely necessary to enable the grantee to distrain, unless he has the reversion of the lands.

Power of distress necessary on creating a rent out of a chattel interest.

A rent not well reserved or granted at law, binds the land in equity.

Although a rent be not well reserved or granted at law, it may be good in equity; thus the land will be incumbered in equity with the annual sum intended as a rent; and such incumbrance will be binding on the land, into whose hands soever the land shall come. Such annual sum should be treated as a charge, by way of lien, 3 Pres. Abs. 55.

The usual manner of giving a power of distress.

The power of distress is usually given to the grantee, his heirs and assigns, or to him, his executors, administrators, and assigns, according to the nature of the grant, in case the annuity or rent-charge be behind for a certain number of days; and the distress in pound to detain, until the annuity or rent-charge, and all arrears thereof, and all costs, charges, and expenses whatsoever sustained, occasioned by or attending the making, taking, and keeping such distress, shall be fully paid and satisfied; *and in default of payment thereof* in due time after such distress shall be made and taken, *to appraise, sell, or otherwise act* therein, according to the due course of law, *in the same manner in all respects as landlords are by act of parliament authorized to do in respect to distresses for arrears of rent upon leases for years.* This power is not to be understood to authorize the grantor and his representatives to *make* a distress in the same manner as landlords and their representatives are enabled to do for arrears of rent upon leases for *years*, but only to *act therein* as to selling, &c. *after the distress is taken;* for although rents, in

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

which a testator or intestate had an estate of freehold, or of freehold and inheritance, are within the statute 32 Hen. 8, c. 37; *ante*, p. 27; yet for *arrears incurred in his lifetime*, on a lease for *years*, no distress could [formerly] be made by his executors or administrators, otherwise than at common law. Now, at the common law, there does not seem to be any case in which executors or administrators can distrain for the arrears due in the life of their deceased testator or intestate, unless the term, with the reversion thereon, vest in them in their representative characters. As if lessee for fifty years' lease for twenty years, reserving rent, and die during the latter term; here the term will vest in his executors, with the reversion for the residue of the fifty years; and therefore in respect of that reversion, they may distrain for the arrears at the common law; and, as it should seem, may even distrain for them as in their own right; because these arrears were never severed from the reversion, but the executors have the reversion, and the rent is annexed thereto, and in the same plight as the testator himself had it, inasmuch as they represented the person of the testator; and it is not like the case of a freehold reversion which descends to the heir, and the arrears due in the ancestor's lifetime go to his executors; *Wade* v. *Marsh*, 1 Roll. Abr. 672, pl. 13; Latch. 211; 11 Vin. Abr. 423, pl. 17; Bradby, 32. [But see now *infra*, Vol. 4, p. 349.]

Executors or administrators could not distrain for arrears of rent on a lease for years, unless the reversion were in them.

If the testator by his will specifically bequeath his reversionary interest in the term, it is necessary that his executor should distrain for the arrears, before his assent to the legacy; as the reversion will thereby be vested in the legatee; *vide ante*, p. 42; and being thus divested out of the executor by his own assent, it should seem that he can no longer distrain for the arrears incurred in his testator's lifetime, although he may have an action on the contract against the lessee. But where a term for years vests in executors or administrators, they may of course distrain for the rent accruing in their own time, as if they were entitled to it in their own right.

Executor should distrain for arrears of rent before he assents to a bequest of the term.

A distinction is taken between a power to re-enter, or a *nomine pœnæ*, and a power to distrain; as where a rent is granted payable, &c. and in default of payment, *if it be demanded*, the grantee may distrain. In this case it is held not to be necessary to make a demand on the day the rent becomes due, as in the case of a re-entry, or a *nomine pœnæ*, where the contrary is not stipulated, but he may demand the rent at any time after, to enable him to distrain; Co. Litt. 202. a., 144. a.; *Maund's case*, 7 Co. 28 b; *Foster* v. *Wandlass*, 7 T. R. 119; Wms. n., 1 Saund. 287 b; Gilb. Rents, 73, 79, 83; even although the land should be in possession of a stranger. *Um-*

A distress may be made under a power, although not demanded on the day it becomes due.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Demand.

phery v. *Damyon*, 1 Buls. 181. [See as to this point, *infrà*, Vol. 4, p. 382. The statute 4 Geo. 2, c. 28, s. 2, (stated *infra*, Vol. 4, p. 381), only extends to cases between landlord and tenant. In *Doe* d. *Biass* v. *Horsley*, 3 Nev. & M. 567, it was held, that a devisee of a rent-charge, with power of entry and perception, in case the rent should be in arrear for a certain time, might, upon the rent falling in arrear, maintain ejectment, without previously demanding the rent, on the ground that it was no *forfeiture*, but a mere right to enter, and receive the rents until the arrears were satisfied. See *Pierson* v. *Sorrel*, 2 Show. 185, Vin. Abr. *Demand*, B. 8.]

A power of distress not usually given on copyhold premises alone.

When an annuity is granted, to be issuing out of a copyhold estate, it is not usual to give a power of distress; because it has been conceived that a copyholder cannot grant such a power. However, Lord Coke expressly says, that such a rent-charge extends as well to estates by the custom, as to estates at the common law. Co. Litt. 185. a. And it seems that such a power of distress is good against every person claiming under the grantor, but not against the lord, who claims by a title paramount. See Gilb. Ten. 297; 2 Watk. Cop. [63, 4.] When an annuity is granted out of copyholds and freeholds, the power of distress is generally extended to both the copyholds and freeholds. It seems to be doubtful, whether rents issuing out of a copyhold are rents seck within the 4 Geo. 2, c. 28, s. 5; see Watk. n., Gilb. Ten. 468; 2 Watk. Cop. 181, 191; but it has been said, that they are within the statute. 1 Scriven on Copyholds, 101, 2nd ed.; Fisher on Copyholds, 138, 2nd ed. See as to the practice in relation to copyholds, *infra*.

For more as to the remedy by distress, *vide infra*, Vol. 4, p. 345, *et seq.*

Power of entry.

In addition to the power of distress, a power of entry on the lands is given to the grantee of an annuity or rent-charge, and his representatives, on default in paying the annuity or rent-charge for a certain number of days.

1st, Taking effect under the Statute of Uses.

If the power of entry be limited by way of use, it takes effect from the statute of uses; as if A., by feoffment, lease and release, fine or common recovery, convey an estate to C. and his heirs, to the use, intent, and purpose, that B. may receive out of the lands, so conveyed, a certain annual sum; and to this further use, intent, and purpose, that if such annual sum, or any part of it, be unpaid by a certain time, it shall be lawful for B. and his assigns to enter upon and hold possession of the land, and receive the rents and profits of it, until the arrears are satisfied: here, as soon as the rent is in

arrear, an use, which is served out of the original seisin of the feoffee, releasee, conusee, or recoverer, springs up and vests in the person to whom the power is given. This use is immediately transferred into possession by the statute: he has consequently a *right* to take and keep that possession, till the purpose for which it is executed is satisfied, and then the use determines. Gilb. on Rents, 137, 138; 6 Bac. Abr. 38, *Rents*, (K), 4; Butl. n., Co. Litt. 203. a, (3). By virtue of this estate he may make a lease for years, to try his title in ejectment, either to obtain the possession of the lands, if it be withheld from him, or to restore it if it be disturbed or divested; and if he assign the annual sum, this right of entry, and perception of the rents and profits of the lands charged with the payment of it, passes with it to the assignee; because it is a matter of inheritance and waits upon the rent, and not a mere possibility, or a contingent estate not coupled with any other estate, in which case it would not pass by a grant of the rent. *Havergill* v. *Hare*, Cro. Jac. 510; Sug. n., Gilb. Uses, 178. This case must be distinguished from the limitation of a *shifting use* to a man, his heirs and assigns, which will not pass to an assignee; as was decided in the case of the *Earl of Kent* v. *Steward*, Cro. Car. 358; 2 Roll. Abr. 49, pl. 4, 792, pl. 1, 795, pl. 9; 13 Vin. Abr. 226; 14 Vin. Abr. 76; 22 Vin. Abr. 222, 228: where, upon a conveyance to one in fee, a shifting use was created in another estate in favour of the same person, his heirs and assigns, in case he or they should be evicted out of the first estate. The first estate was aliened, and the assignee was evicted; and it was determined that the assignee could not enter on the other estate, but that the shifting use, on eviction, ought first to vest in the person to whom it was limited; for the words 'heirs and assigns' are to be taken as words of limitation, and it shall not first vest in the assignee as purchaser; and it is not such an interest as is assignable over before eviction.

Distinction between a *springing* and a *shifting* use.

But a distinction must be made between a power of entry limited by way of use, and a grant of a rent to be issuing out of certain lands, with a proviso, declaration, or covenant, that if the rent be in arrear, the grantee may enter, &c. In the latter case, when the rent is in arrear, the grantee or his assignee, *Havergill* v. *Hare*, Cro. Jac. 511, 512, may enter, by virtue of such proviso, and hold the lands until he be paid the rent by the perception of the profits: for although it has been objected that there is no estate conveyed, or no seisin in any person, out of which an use can arise to the grantee upon non-payment of the rent; and that this grant can pass no estate to the grantee as a conveyance at common law, because

2d, Power of entry at common law.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Power of entry.

the grantee can have no inheritance or freehold in the land when the rent becomes in arrear, for want of livery, nor an estate for years, for want of a certain commencement and determination; yet it has been adjudged, that, by the grant, he has an *interest* vested in him when the rent becomes in arrear; as in the case of a feoffment rendering rent, with condition, on non-payment, to re-enter and retain till satisfied, which is a good grant by the intention of the parties; Litt. sec. 327; and yet there is no livery by the feoffee to reconvey the land, nor any express grant, but only a condition to re-enter and take the profits until he be satisfied; for a man may grant an inheritance of an *interest* in the land without livery; as, *vesturam terræ* 17 E. 2, 5 Hutt. 45, Fitz. *Precipe*, 55; so he may grant the trees, which are an inheritance, or inherent in the land; and although the power of entry be an uncertain interest, which, for the uncertainty of its commencement and determination, might be void by the strict rules of law, if it were granted independent on any certain estate, yet it is good in this case, because it is created to attend a determinate estate; and non-payment of the rent fixes the certainty of its beginning, and the satisfaction of the arrears, by the perception of the profits, the end and determination of such interest; and therefore, the grantee may reduce such interest, as it arises, into his possession by ejectment, which is the proper method to recover the possession. Gilb. on Rents, 139.

The nature of the estate under a power of entry.

When the rent is granted in fee, the power of entry is an inheritance, and descends with the rent to the heir; but when the entry is made, it is then no more than a chattel interest in the land, which shall go with the arrears to the executors. Butl. n., Co. Litt. 203. a., (2). But if it were not for the words, "and to retain until he be satisfied out of the profits," it would be an inheritance in the land to remain in the heir as a penalty; but by reason of those words it is only a chattel, and shall go to the executors, who are the persons that are to be satisfied of these arrears. However, as after entry,

Without express words, the grantee cannot commit waste.

under a common power of entry and perception, the grantee or his representatives cannot cut trees or commit waste, but only take the ordinary profits; it should be added at the end of the power, when the grantor either has the fee or an estate unimpeachable for waste, "and such possession, when taken, to be without impeachment of waste:" but this addition, of course, should not be inserted, when the grantor himself is impeachable for waste. See *Havergill* v. *Hare*, Cro. Jac. 510; 2 Roll. Rep. 2; Poph. 126, 147; 3 Bulstr. 250: *Jemott* v. *Cowley*, 1 Saund. 112 a; 1 Lev. 170; 1 Sid. 223, 261, 344; Sir T. Raym. 135, 158: *Parkhurst* v. *Smith*, Willes, 340,

Bridgm. ed. Bull. N. P. 104 (a), Runnington's ed. Gilb. Ejectment, 64, ed. 1795: *Birch* v. *Wright*, 1 T. R. 378.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

[Although generally a right of entry will pass to the assignee of a rent, there must be clear evidence of the intention to annex such a right to the rent into whatever hands it comes; and therefore where R. devised a rent-charge to his widow during her widowhood, with power *to her* to enter, &c., and after her marriage the rent to be paid to C., his executors, administrators, and assigns; and upon the marriage of the widow, C. received the rent during his life, and died without bequeathing it; it was held, that his executor could not enter or bring ejectment on non-payment of the rent. *Hassell* v. *Gowthwaite*, Willes, 500.]

Power of entry not extended to copyholds.

This power of entry cannot extend to copyholds; because, 1st, copyholds are not within the statute of uses; Gilb. Ten. 182; Co. Cop. s. 54, Tr. 124; Noy's Max. 319, 9th ed.; 2dly, the tenant has no power to convey a copyhold estate except by surrender, according to the custom; for if he had, the lord would have a tenant brought into the estate without his admittance or consent. Gilb. Ten. 181, 185.

Terms on which a trustee in possession will be ordered to deliver up possession after arrears paid.

Where a trustee of a term of years, upon the usual trusts for securing annuities, has taken possession of the estates under the trusts, although all arrears of the annuities may afterwards be paid, a court of equity will not order possession to be given up to the grantor, except upon such terms as will enable the trustees to resume it, and to receive the rents, the moment the annuities are again in arrear, without the necessity of bringing an ejectment: and therefore in the interim the grantor, or his agents, to receive the rents and profits in the names of the trustee and the annuitant, or one of them, and the receipts to be given accordingly; and the grantor to be at liberty to use the names of the trustee and annuitant, or either of them, in making or supporting distresses for rent upon the tenants of the estates; the grantor indemnifying the trustee and annuitant, and each of them, from all costs and damages by reason or in consequence of such distress. *Jenkins* v. *Milford*, 1 Jac. & Walk. 629.

Equity will direct a sale in order to raise arrears of rent-charge.

[J. In addition to the remedies at law which the owner of a rent-charge has for its recovery, it seems he may in some cases, by a suit in equity, compel a sale for the arrears. Thus, in *Cupit* v. *Jackson*, M'Clel. 495, where, on the marriage of T. B. with E. J., certain

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Equitable remedy.

lands were limited to the use and intent, (among other limitations), that T. B. should receive during his life an annuity or yearly rent of £60, and to which were annexed the usual powers of distress and entry. At his death, arrears to the amount of £450 were due, and his executors filed a bill against the owner in fee of the lands, praying payment of the arrears, and that they might be raised by sale or mortgage. Lord C. B. *Alexander* held, that, though the plaintiff had legal remedies for the recovery of the rent-charge, yet this was no bar to the equitable relief sought, which was more convenient and effectual; and he was of opinion that the Court had a right to raise the arrears out of the estate, if necessary, by sale or mortgage, the charge being an incumbrance on the estate. The learned Chief Baron relied upon the case of the *Duke of Leeds* v. *Corporation of New Radnor*, 2 B. C. C. 338, 518, as an authority for this doctrine; in which case, he observed a bill was filed for a fee-farm rent, and the Lord Chancellor, reversing a decree at the Rolls, granted the relief prayed.[J.]

Remarks upon *Cupit* v. *Jackson*.

[J.In the case referred to, however, the bill did not pray a sale, but merely an account, and that the lands might be declared to be charged, &c. One of the allegations, too, was, that the plaintiff's remedy at law was imperfect, as the boundaries of the lands had been changed, and the rent was partly charged on tolls and other incorporeal hereditaments, which were not distrainable; and the several cases cited by Lord *Thurlow* in his judgment had the same characteristic, namely the inadequacy of the legal remedies. His Lordship certainly does not appear to have declared as a general proposition, that the arrears of a rent-charge might in all cases be raised in equity by sale or mortgage. Such a rule indeed might, in some cases, produce great injustice. Thus, suppose a rent-charge was limited to A. for life, and the lands charged therewith were settled upon B. for life, with remainder to his first and other sons in tail: if A. was at liberty to resort to a court of equity, to have the arrears of the rent, which his own negligence had permitted to accrue, raised by a sale, the consequence would be, that a portion of the inheritance might be taken from the issue of B., in order to raise a charge, which might, by means of the annual rents, have been satisfied exclusively out of the estate of B., the tenant for life, during which they accrued, and by whom therefore they ought to have been borne. The doctrine in question, too, seems to be inconsistent with the principle of those cases, in which the question has been agitated, whether the Court was authorized to direct a

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

sale, in order to raise a gross sum, payable out of the rents and profits (*a*): for, if the Court could by this means raise the arrears of a rent-charge, secured by powers of distress and entry, there never could have been any question as to the right to raise a gross sum, though charged on the *annual* profits; whereas the rule established by these cases is, that the sale is not warranted where rents and profits are explained to mean *annual* rents and profits.[J.]

Value of annuity raisable by sale in case of bankruptcy.

[[J.] It seems, that where the grantor of a rent-charge has become bankrupt, and the value is proveable under the commission (*b*), the annuitant may obtain an order for sale as in the case of a mortgage.[J.] [In *Ex parte Slack*, 1 Gl. & Ja. 346, upon petition of an annuitant, having a charge upon real estate, the land was ordered to be sold before the commissioners, and the purchase-money was directed to be applied in payment of the costs of the application and sale, and then of the arrears due at the date of the commission, and the value of the annuity, as ascertained by the commissioners, the annuitant being at liberty to prove for any deficiency. But the commissioners have no authority to order a sale under such circumstances, the order must be obtained on petition. *Re Delves*, Mont. 492. If the annuitant has a policy of insurance on the bankrupt's life, he cannot prove without submitting to a sale of the policy, the proceeds of which will be applied, first, in payment of the expenses, and of the premiums paid by the creditor, and then of the annuity. *Ex parte Tierney*, Mont. 78.]

[[J.] In *Ex parte Price*, 3 Madd. 132, where P. agreed to pay A. an annuity of £40 during his life, in consideration of £400; and a bond and warrant of attorney were given to secure the same; and two years afterwards P. deposited a lease with A. as a further security (*c*): P. having become bankrupt, A. filed a petition, pray-

(*a*) See these cases collected, 1 Jarm. Pow. Dev. 234, n., and *infra*, Vol. 5, p. 152.

(*b*) [By the stat. 6 Geo. 4, c. 16, s. 54, any annuity-creditor of any bankrupt, by whatever assurance the same be secured, and whether there were or not any arrears of such annuity due at the bankruptcy, shall be entitled to prove for the value of such annuity; which value the commissioner shall ascertain, regard being had to the original price given for the said annuity, deducting therefrom such diminution in the value thereof as shall have been caused by the lapse of time since the grant thereof to the date of the commission. See *Thompson* v. *Thompson*, 2 Scott, 266: *Ex parte Fisher*, 2 Gl. & J. 102: *Ex parte Webb*, Id. 29: *Ex parte Saxe*, 2 Dea. & Ch. 172: *Ex parte Annandale*, 2 M. & Ay. 19: *Ex parte Vanheythusen*, 1 Dea. 360: *Ex parte Parratt*, Id. 696: *Ex parte Marks*, 3 Deac. 133: *Ex parte Fairman*, Id. 467: *Ex parte Bogue*, Id. 314.]

(*c*) For the law respecting securities by deposit of title deeds, *vide infra*, Vol. 5, p. 109.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Bankruptcy.

ing that it might be referred to the commissioners to value the annuity, and that the lease might be sold, and the produce applied in satisfaction of the arrears and value (after payment of costs); and that he might prove for the residue: Sir *J. Leach*, V. C., granted the petition accordingly. Indeed, the only objection insisted on was, that the security was not memorialized; but the Vice-Chancellor held, that, as it formed no part of the agreement when the annuity was granted, a memorial was not necessary (*a*).[J.]

[J. So, in an unreported case, (with a note of which the editor has been favoured), *In re Mott*, a bankrupt, before the same learned Judge, his Honor, on the petition of a life annuitant, ordered the freehold hereditaments charged with the annuity to be sold, and out of the purchase-money the arrears and value to be paid to the petitioner, and the expenses attending the sale; and that the petitioner might prove any deficiency under the commission, 29th March, 1822, MS.J.]

Effect of bankruptcy on liabilities of grantor and surety.

[J. The law respecting the liability of annuity-debtors, standing in the relation of principal and surety, has been considerably modified by the bankrupt act, 6 Geo. 4, c. 16, which has introduced two salutary alterations (*b*): First, that of making it compulsory on the creditor, in order to charge the surety, to prove the value against the estate of the principal, and thereby taking it out of his power to exclude the surety (as he formerly could) from the benefit of the commission, by refusing to prove the value; and, secondly, making the bankrupt's certificate operate as a discharge from his liability to the surety, as well as the annuity-creditor. The annuity clauses in the act are as follow:—

Bankrupt act, 6 Geo. 4, c. 16, s. 54.

Sect. 54. "Any annuity-creditor of any bankrupt, by whatever assurance the same be secured, and whether there were or not any arrears of such annuity due at the bankruptcy, shall be entitled to

Annuity creditor may prove value,

prove for the *value* of such annuity, which value the commissioners shall ascertain, regard being had to the original price given for the said annuity, deducting therefrom such diminution in the value thereof as shall have been caused by the lapse of time since the grant thereof, to the date of the commission."

and not to sue

Sect. 55. "It shall not be lawful for any person entitled to any

(*a*) [J. How could a deposit security be the subject of a memorial? To hold a memorial to be necessary, would be to say, that an annuity could not be so secured.J.]

[J. If any additional instrument for securing an annuity were executed before the expiration of the period of enrolment prescribed by the act, (*i. e.* within thirty days after the grant), it would be prudent to include it in the memorial.J.]

(*b*) [See *Johnson* v. *Compton*, 4 Sim. 37.]

annuity granted by any bankrupt, to *sue*(*a*) any person who may be collateral surety for the payment of such annuity, until such annuitant shall have proved under the commission against such bankrupt for the value of such annuity, and for the payment thereof; and if such surety, after such proof, pay the amount proved as aforesaid, he shall be thereby discharged from all claims in respect of such annuity; and if such surety shall not (before any payment of the said annuity subsequent to the bankruptcy shall have become due) pay the sum so proved as aforesaid, he may be sued for the accruing payments of such annuity until such annuitant shall have been paid or satisfied the amount so proved, with interest thereon at the rate of four per cent. per annum from the time of notice of such proof and of the amount thereof being given to such surety; and after such payment or satisfaction, such surety shall stand in the place of such annuitant in respect of such proof as aforesaid, to the amount so paid or satisfied as aforesaid, by such surety; and the certificate of the bankrupt shall be a discharge to him from all claims of such annuitant, or of such surety in respect of such annuity: provided that such surety shall be entitled to credit in account with such annuitant for any dividends received by such annuitant under the commission, before such surety shall have fully paid or satisfied the amount so proved as aforesaid."[J.]

surety until he has proved.

Surety discharged by paying the value proved by the creditor.

Or he may go on paying the annuity until the amount proved, and interest, have been paid.

Surety to stand in the place of proving creditor.

Certificate of bankrupt to discharge him from claim of annuitant and surety.

Surety to be allowed credit for dividends received by annuitant.

[J. This clause has been held to apply to commissions issued before the statute, where the annuity creditor had an opportunity of proving. *Bell* v. *Bilton*, 1 Moore & Pay. 574; 4 Bing. 615. In this case *no* dividend had been declared, and, therefore, the question was not raised as to what would be the effect where, though a final dividend had not been made, yet the sum remaining to be distributed was insufficient to place the annuity-creditor on an equal footing with the other creditors.J.] [*Hone* v. *Morgan*, 4 Man. & Ry. 559. Where an annuity-bond was forfeited before the bankruptcy of the principal, which occurred before the passing of the above act, it was held, that the surety could only prove for the arrears due before the bankruptcy, the annuity-creditor not having proved for the value. *Ex parte Parton*, 2 Deac. 62.]

Act applies to commissions already issued.

[J. It is not clear whether the statute applies to the case of a *surety* becoming bankrupt. The term, "annuity-creditor of any bankrupt," might seem to embrace every case in which the bankrupt was liable to pay the annuity, whether in the character of principal or

Whether statute applies to the case of bankrupt sureties.

(*a*) [Suing out execution upon a judgment is within these words. *Hone* v. *Morgan*, 4 Man. & Ry. 559.]

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Bankruptcy of Surety.

surety; but the prevailing opinion seems to be, that the statute has no application to such a case. And this opinion derives some support from the subsequent clauses, which, while they explicitly define the nature and extent of the surety's liability, after the value of the annuity has been proved against the estate of the bankrupt principal, have no corresponding provisions adapted to the converse case, of the surety becoming bankrupt. Assuming this hypothesis to be correct, the consequence is, that the value not being proveable under his commission, the surety continues liable to pay the annuity to the creditor, although he may have obtained his certificate, and must resort to the principal, to be reimbursed the sums he shall have paid on account of it. If the principal should become bankrupt, and should obtain *his* certificate, *he* would be discharged not only from the claim of the creditor, but of the surety also. This seems to place the surety in a situation of some hardship, his own certificate being no protection against the claim of the annuitant, while the certificate of the principal excludes his (the surety's) claim to indemnity. Perhaps this consequence was not foreseen by the framers of the act, or they may have thought that it was unjust to the creditors of the surety, that the value of the annuity should be proved against his estate which had received no advantage from it, as well as to the bankrupt principal, that he should continue liable to the surety after his own estate had paid a dividend on the value, of which the surety had had the benefit.[J.] [It was accordingly held, in the case of *Thompson* v. *Thompson*, 2 Scott, 266, that the instalments of an annuity for the payment of which the bankrupt was surety only, and which he expressly covenanted to pay in case of the default of the grantor, were not proveable under a fiat against the surety, when such instalments did not become due until after the bankruptcy of the surety. "This decision," said *Tindal*, C. J., "does not in any manner overrule the case of the proof against the estate of the guarantee or surety for a debt after the default of the principal, which proof was allowed in *Ex parte Myers*, 1 Mont. & Bl. 229; 2 Deac. & Ch. 251; but is limited to the case before us, the proof of the instalments of an annuity." See *Ex parte Thompson*, 1 M. & Bl. 219; and in *Ex parte Marks* v. *Colnaghi*, 3 Deac. 133, it was held that there could be no proof against the surety, although he covenanted, absolutely and unconditionally, to pay, if it could be collected from the deed that he was intended only to be answerable in case of the grantor's default.]

[J. It was held under the stat. 49 Geo. 3, (and the late act made no alteration in this respect), that where one of three sureties paid

money on account of the annuity after the bankruptcy of a co-surety, the certificate of the latter was no bar to an action for contribution. *Browne* v. *Lee*, 6 B. & Cr. 689.]

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

If an annuity be void, the creditor may prove for the consideration that is due: but it has been determined, that if he insist upon his securities at the date of the commission, he cannot afterwards abandon them and prove the consideration. *Ex parte James*, 5 Ves. 708; *sed quære* as to the latter part of the rule. 1 Montagu's Bankrupt Laws, 211, 2nd Ed. If an annuity be not enrolled, from a fraudulent representation that it is secured upon lands in fee-simple of equal annual value, and so not within the statute, it seems that the value of the annuity is proveable. *Ex parte Wright*, 1 Rose, 308; 19 Ves. 225. A bond for the absolute payment at fixed periods of an annuity for a term of years, is proveable under a commission of bankrupt, issued against the grantor of the annuity. *Pattison* v. *Banks*, Cowp. 540.

Consideration for annuity may be proved in bankruptcy, after securities are set aside.

The intention of the legislature in directing the commissioners to ascertain the value of the annuity, was not that the commissioners should have the power to fix the value, but that they should decide according to evidence, with respect to the value. *Ex parte Thistlewood*, 1 Rose, 290. In general, the value to be proved is the original sum given for the purchase of the annuity, with the diminution occasioned by the lapse of time since the grant. *Ex parte Whitehead*, 1 Meriv. 127. But under particular circumstances, the value at the time of the proof may be much greater than at the time of the original purchase; thus, if the grantor of an annuity be in an infirm state of health when the annuity is granted, and afterwards recover. *Ex parte Thistlewood*, 1 Rose, 290; 19 Ves. 237. [But the late act precludes the commissioners from estimating the value by any other criterion than the original price. *Ex parte Slack*, 1 Gl. and Jam. 346: *Ex parte Webb*, 2 Id. 29: *Ex parte Fisher*, Id. 102; *ante*, p. 51, n.]

Commissioners of bankrupt must value annuities according to evidence.

A set-off may be pleaded to an action for the arrears of an annuity. *Collins* v. *Collins*, 2 Burr. 820. But where A. purchased an annuity of 200*l.* for 2000*l.* to be paid after her death, the grantor becoming bankrupt and indebted to her in 2275*l.* 5*s.* 9*d.*, it was decided, that the annuitant was not entitled to set-off the 2000*l.* against the 2275*l.* 5*s.* 9*d.*; for as she could not be compelled to pay in advance, the bankrupt ought not to be compelled to take in advance. *Ex parte Whitaker*, 1 Rose, 301; 1 Montagu's Bankrupt Laws, 212, 225, 2nd Ed.; 1 Cooke's Bankrupt Laws, 157, 7th Ed.

Set-off may be pleaded.

[In the case of *Lyde* v. *Mynn*, 4 Sim. 505; 1 Myl. & K. 683,

Bankruptcy

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

a trader granted an annuity to B., and covenanted to charge it upon such property as he should become entitled to in the event of his wife's decease, by virtue of her will or otherwise. The grantor then became bankrupt and obtained his certificate, after which his wife died, having, in exercise of a power, appointed an annuity in trust for the grantor. Upon a bill filed by the annuitant, who had not proved under the bankruptcy, a decree was made, specifically charging the annuity upon the fund appointed for the benefit of the grantor. "As the debt," observed Lord *Brougham*, C., "to secure which the covenant was given, that is, the annuity, was capable of valuation, it may be said that there was a discharge of the debt itself by the certificate; and that, therefore, the security for the debt must also be gone. But that result by no means follows. The one liability was proveable—it was a debt; the other was a personal obligation to do an act in a certain event, which did not happen till after the bankruptcy and certificate, and which might never have happened at all. It was no debt, though it related to a debt."]

and certificate no discharge of a covenant to charge future property.

Insolvency of grantor.

It will be useful to advert to the law respecting annuities granted by *insolvent debtors*. By the act 1 Geo. 4, c. 119, intituled "*An Act for the relief of Insolvent Debtors in* England; *to continue in force until the first day of June, one thousand eight hundred and twenty-five*," it is by the 10th section enacted, "That all and every creditor and creditors of any such prisoner, for any sum and sums of money payable by way of annuity or otherwise, at any future time or times, by virtue of any bond, covenant, or other securities of any nature whatsoever, may be and shall be entitled to be admitted a creditor or creditors, and shall be entitled to receive a dividend or dividends of the estate of such prisoner, in such manner and upon such terms and conditions as such creditor or creditors would have been entitled unto by the laws now in force, if such prisoner had become a bankrupt, the amount upon which such dividend shall be calculated, and the terms and conditions on which the same shall be received, being first settled by the said court ["*The Court for the Relief of Insolvent Debtors*"]; and without prejudice in future to their respective securities, otherwise than as the same would have been affected by a proof made in respect thereof by a creditor under a commission of bankrupt, and a certificate obtained by the bankrupt under such commission."

51 G. 3, c. 125, discharged insolvent grantor from payment

There was a similar provision to the above in the Insolvent Debtor's Act, 51 Geo. 3, c. 125, s. 16, and it was held, that the grantor of an annuity, liberated by virtue of that act, was discharged

both as to his person and property from all future payments of the annuity, but that the act was no discharge of his sureties, or of specific securities. *Cowley* v. *Bussell*, 4 Taunt. 460. And the person of the insolvent is discharged, under that act, [and under statute 1 Geo. 4, c. 119,] from the arrears of an annuity secured by covenant [or bond], accrued after his discharge: because the 49 Geo. 3, c. 121, s. 17, discharges a bankrupt therefrom. *Mence* v. *Graves*, 4 Taunt. 854: [*Collins* v. *Lightfoot*, 8 Dowl. & Ry. 339; 5 B. & Cr. 581.] But it was held, that a person discharged under 51 Geo. 3, c. 125, is liable to his *surety* for the arrears of an annuity due since his discharge, which the surety has been obliged to pay. *Page* v. *Bussell*, 2 Mau. & Selw. 551. [See also *Freeman* v. *Burgess*, 1 Moore & Pay. 91; 6 Scott, 202.] Mr. Justice *Le Blanc* observed, the 51 Geo. 3 says, that the creditor shall be entitled to be admitted a creditor; but it does not say that the debtor shall be discharged, in the same manner as if he had been a bankrupt. Mr. Justice *Bayley* said, even in the case of a bankrupt, if the annuity creditor does not come in and prove, but, disregarding the bankruptcy, sues the surety, the surety cannot insist on the certificate; and if he cannot, may not the surety afterwards resort to the bankrupt? The present is a debt accrued since the debtor's discharge, and therefore the plaintiff is entitled to judgment. This opinion of Mr. Justice *Bayley* seems to be contrary to the 49 Geo. 3, c. 121, ss. 8 and 17, and to his own determination with the rest of the Court, in *Wood* v. *Dodgson*, 2 Mau. & Selw. 195. The words of the act 51 Geo. 3, c. 125, s. 16, to which Mr. Justice *Le Blanc* alluded, are the same as those in the act 1 Geo. 4, c. 119, s. 10; and it is conceived that those words were sufficient to discharge the insolvent by virtue of the 49 Geo. 3, c. 121, s. 8; which section appears in *Page* v. *Bussell* to have been wholly forgotten both by the Court and counsel.

of annuity to grantee;

but it has been held not to discharge him from payment to surety.

[This question cannot now arise on the late bankrupt act, which, we have seen, expressly discharges a bankrupt-grantor of an annuity from the claims of his surety. The law, however, as to the liability of *insolvent debtors* to their sureties, remains untouched by the late insolvent act, 1 & 2 Vict. c. 110, s. 80, which contains the following clause relating to annuities:—

Insolvent Debtors' Act, 1 & 2 Vict. c. 110, s. 80.

"That the discharge of any such prisoner, so adjudicated as aforesaid, shall and may extend to any sum or sums of money which shall be payable, by way of annuity or otherwise, at any future time or times, by virtue of any bond, covenant, or other securities of any nature whatsoever; and that every person and persons who would

Insolvent discharged from annuities, and creditor may claim value.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

be a creditor or creditors of such prisoner for such sum or sums of money, if the same were presently due, shall be admissible as a creditor or creditors of such prisoner for the value of such sum or sums of money so payable as aforesaid, which value the said Court shall upon application at any time made in that behalf ascertain; regard being had to the original price given for such sum or sums of money, deducting therefrom such diminution in the value thereof as shall have been caused by the lapse of time since the grant thereof to the filing of such prisoner's petition; and such creditor or creditors shall be entitled in respect of such value to the benefit of all the provisions made for creditors by this act, without prejudice nevertheless to the respective securities of such creditor or creditors, excepting as respects such prisoner's discharge under this act."]

Surety not released by discharge of principal under Insolvent Act.

[A surety who had executed a joint and several warrant of attorney to secure the payment of annuity, was held not to have been released by the discharge of the grantor under the insolvent debtors' act; and it seems to have been thought, that, notwithstanding such discharge, he might sue his principal for payments subsequently made. *Hocken* v. *Brown*, 6 Scott, 194. And in *Abbott* v. *Bruere*, 7 Scott, 753, which was an action by a surety for an annuity on a covenant of indemnity entered into by the grantor, it was decided that the grantor was liable to the surety for payments made subsequently to his discharge under the insolvent debtors' act, on account of arrears due before his discharge, it not appearing that the surety had any notice of the annuity being in arrear before the defendant obtained his discharge. These cases were decided upon the clause in the stat. 7 Geo. 4, c. 24, s. 51, which is in the same words as the 80th section of the stat. 1 & 2 Vict. c. 110.]

Principal not released by his discharge from liability to surety.

[See further as to principal and surety, *infra*, Vol. 4, p. 172; and Index, tit. SURETY.]

Rent-charge now barred by the Statute of Limitations.

Extinguishment of rents.]—The Statute of Limitations of Jac. 1 did not apply to a rent-charge, and therefore could not be pleaded as a bar to a claim of arrears either at law or in equity. *Collins* v. *Goodall*, 2 Vern. 235: *Stackhouse* v. *Barnston*, 10 Ves. 467: *Cupit* v. *Jackson*, M'Clel. 505. See also *Bonnington* v. *Wanthall*, 2 Ch. Rep. 219. But after a great lapse of time without demand, a release or extinguishment of the rent was presumed. In *Eldridge* v. *Knott*, Cowp. 214, Mr. Baron *Eyre* directed a jury to presume a release or extinguishment of a *quit rent* belonging to the lord of a

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Limitations.

manor, after non-claim for thirty-seven years, and though Lord *Mansfield* and the rest of the Court of King's Bench (*a*) granted a new trial, on the ground that such a rent, being within the stat. 32 Hen. 8, c. 2, s. 4, which requires persons making avowry for any rent, suit, or service, to have been seised within fifty years, no presumption or extinguishment ought to arise in a shorter period, yet they admitted the general doctrine of presumption as applicable to the case of rents. The law on this subject is now regulated by the statutes, 3 & 4 Will. 4, c. 27, ss. 2 & 42, and 3 & 4 Will. 4, c. 42, s. 3. *Vide ante*, pp. 9 & 23, n. ; and *infra*, Vol. 5, p. 233. An action of debt upon covenant for arrears of a rent-charge granted by indenture may be brought within twenty years. *Strachan* v. *Thomas*, Q. B. 1840, T. T.; 4 Jurist, 1183.]

Effect of release on unaccrued rent.

[J. As to the effect of releases upon *rents*, the early books present many distinctions. Thus, it is laid down, that a release of all *demands* will extend to a rent-charge, or to a rent-service, parcel of a seigniory in gross. *Wilton* v. *Bye*, Cro. Jac. 486; see 2 Roll. Ab. 408. While, on the other hand, it is clear that it will not extend to a rent incident to a reversion of lands, *i. e.* to a rent reserved upon an ordinary lease for years. Thus, where an action was brought on a lease for years, for a year's rent due at Lady-day, 1689, and the defendant pleaded a release of all demands, dated 18th Nov. 1688: it was held, that the release extended to discharge the first half-year's rent then overdue, but not that of the second or current half-year, which was not then demandable. *Stephens* v. *Snow*, 2 Salk. 578; see also *Henn* v. *Hanson*, 1 Lev. 99: *Ingram* v. *Bray*, 2 Lev. 210.J.]

Release of *actions*, how construed.

[J. Even admitting that a release of all *demands* would now be held to extend to a rent-charge or annuity, (which is doubtful) it is clear that a release of all *actions* merely would not; *Tuke* v. *Cheek*, Cr. El. 897: *Diggs's case*, Moore, 133; or at least would apply only to the arrears then actually accrued ; 2 Roll. Ab. 404; as the word *actions* in these cases is construed as synonymous with *existing causes of action*. Shepp. Touch. 339. And, therefore, a release of all actions will not discharge a sum of money not due at the time, Co. Litt. 292; unless, indeed, (according to a distinction more technical than solid, but much insisted on in the early cases),

(*a*) [J. The arguments founded on the *small amount* of the rent, which was but 2*s*. 6*d*., (a sum for which it was said the lord might think it not worth while to bring an action), savour strongly of that laxity of reasoning which so much distinguished the Court while Lord *Mansfield* presided over it.J.]

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

in the instance of a bond, which, being *debitum in præsenti*, though *solvendum in futuro*, it is said, is discharged by a release given before the day of payment appointed by the condition. Co. Litt. 291: *Altham's case*, 8 Rep. 153: *Cage* v. *Acton*, 1 Ld. Raym. 519. Clearly, however, it would not extend to a covenant not then broken, there being no cause of action until a breach. See *Hoe's case*, 5 Rep. 71. Though it is not certain that all these distinctions would now be adopted, yet persons drawing releases ought not to lose sight of them, but expressly qualify or enlarge the terms of the instrument so as to exclude doubt.[J.]]

Rent-charge extinguished by a release of *part* of the lands.

[[J.] If the owner of a rent-charge issuing out of twenty acres releases all his right to one acre, the rent is extinguished in the whole. 2 Roll. Ab. 414; Co. Litt. 148; Shepp. Touch. 345. And on the same principle, if the grantee of a rent-charge acquire as purchaser part of the land out of which it issues, the rent is gone *in toto*, "because the rent is entire and against common right, and therefore by purchase of part it is extinct in the whole, and cannot be apportioned;" Co. Litt. 148. a.; but if the grantee of a rent-charge releases part of the *rent*, such release operates *pro tanto* only, and does not extinguish the whole rent. 5 Bac. Ab. 694.[J.]]

Extinguishment or apportionment by unity of possession.

If a man have a rent-charge to him and to his heirs, issuing out of certain lands, if he purchase any parcel of this land to him and to his heirs, all the rent-charge is extinct. Co. Litt. 147. b. [And an acceptance of a devise of part of the lands is a purchase sufficient to cause such extinguishment. *Dennett* v. *Pass*, 1 Scott, 218.] And the grantee's remedy by writ of annuity is extinct also, if he did not elect to charge the person before he made the purchase; Dyer, 140 a., pl. (20); Gilb. Rents, 152; because the rent-charge cannot by such manner be apportioned (*a*). But if a man, who has a rent-

(*a*) [As to the apportionment of annual payments. *Vide infra*, Vol. 4, p. 334; and *Weigall* v. *Brome*, 6 Sim. 99.]

Remarks upon the Apportionment Act of 4 & 5 Will. 4, c. 22.

[[J.] It is doubtful whether an annuity which determines with the life of *cestui que vie* is within the statute 4 & 5 Will. 4, c. 22, which, it will be observed, enables the annuitant to recover the apportioned parts, "*when the entire portions, of which such apportioned parts form part, shall become due and payable;*" so that if the entire portion *never* becomes payable, the annuity absolutely ceasing at the determination of the interest of the immediate life owner, the act appears not to apply. Indeed, to give the annuitant a proportion, would seem (supposing the instrument to be silent on the subject) to be an unauthorized interference with the contract of the parties; for why should one party be bound to pay, and the other entitled to receive more than such contract specifies? Where the annuity exists after the determination of the interest of the person entitled for life, the act, equitably enough, apportions the current payment between his representatives and the ulterior donee, and it will no doubt be held

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Apportionment.

service, purchased parcel of the land out of which the rent is issuing, this will not extinguish all, but only for the parcel. Gilb. Rents, 151, 152; Co. Litt. 148. a. For a rent-service in such case may be apportioned according to the value of the land. But if a man hold his land of his lord by the service, to render to his lord yearly, at a certain feast, a horse, a golden spear, or a clove gilliflower, or the like; if in this case the lord purchase parcel of the land, such service is taken away, because such service cannot be served nor apportioned. Litt. s. 222; and see Noy's Tenures, 6, 7, 8, 292, 293, 294, 9th ed. Noy's Max. So, if the grantee of a rent-charge take a lease of the land for years, he shall not after the years are ended have his election to make this an annuity. *Fulwood* v. *Ward*, Poph. 87. So, wherever an annuity is granted for the performance of any duty or service, and the grantee refuses or neglects to perform it, the annuity becomes extinct. Co. Litt. 402. a. As in the instances of lawyers and physicians, *pro concilio impenso et impendendo*, with this difference, that the physician must go to his patient, though the client must attend or write to the lawyer. Bro. Abr. *Annuitie*, pl. 7, pl. 18; 2 Vin. Abr. 514, pl. 2. Yet in *Mingies's case*, Poph. 135, a writ of annuity was brought by him *pro concilio impenso et impendendo;* defendant pleaded in bar, that he carried a bill to the plaintiff to be signed, and because he refused, he detained the annuity: and *per curiam*, this is no plea; for he is bounden to give advice, but not to set his hand to every bill, for this may be inconvenient to him. So, if an annuity be granted to a man for keeping a park, and the game be not preserved through his fault, that is an extinguishment of the annuity. Bro. Abr. *Annuitie*, pl. 49. Upon the same principle, if an annuity be granted *pro decimis*, and the grantee be unjustly disturbed of the tithes, the annuity ceases: for these being the express considerations of the annuities, they are thereby rendered conditional. Co. Litt. 204. a. So again, if an annuity be granted *pro homagio et servitio*, and the grantor disclaim

Extinction of annuities granted for future services, &c.

to reach the numerous class of cases in which a share of the public funds or annuities is given to a person for life. Even if the ulterior donee disposes of the stock before the next half-yearly dividend becomes "due and payable," it is conceived that the representatives of the deceased life owner must nevertheless wait for the apportioned part until such day of payment.[J.] [See 1 Hayes' Conv. p. 338, 5th Ed.]

[It seems that where a life annuity is settled by a man on his wife by way of separate maintenance, she is, in exception to what was the general rule, at least before the above mentioned statute, entitled to a proportional sum for the period intervening between the last day of payment and the day of her decease. *Howell* v. *Hanforth*, 2 Will. Blackst. 843, 1016: *Hay* v. *Palmer*, 2 P. Wms. 502.]

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

the services in a writ of annuity, the annuity is extinct. Bro. Abr. *Extinguishmeut*, pl. 37. And if an annuity be granted so long as the grantee is *benevolens, proferens, et amicabilis* to the grantor, and the grantee labour to put the grantor out of service, it is a forfeiture of the annuity. Bro. Abr. *Annuitie*, pl. 35; and *Double plea*, pl. 100. See *Mattock* v. *Kinglake*, 1 Per. & D. 46.]

A rent in fee does not escheat on failure of heirs, but sinks into the land.

A rent differs materially from land; because the old principles of the feudal law looked upon every modification of landed property, which was considered to be against common right, with a very jealous eye. Upon this principle, the law, in most instances, avoided giving by implication a continuance to the rent, beyond the period expressly fixed for its continuance. Thus, if a rent be granted to a man and his heirs generally, and he die without devising the rent, and without an heir, the rent does not escheat, but sinks into the land. Butl. n., Co. Litt. 298. a., (2); Vaugh. 39. And as a devise, though it only takes effect at the moment of the testator's death, will prevent an escheat; 3 Cru. Dig. 440, s. 21, 2nd ed.; so it seems, by analogy, that a devise will prevent the rent from sinking into the land. But it seems there must be an express devise of the rent, and not a mere authority to sell. *Reeve* v. *The Attor.-Gen.*, 2 Atk. 223, *sed vide contra*, Lord Nottingham's MS. n., Co. Litt. 236. a., (1).

It seems, an express devise will prevent the rent from sinking into the land.

The reason why a rent-charge determines on the death of grantee, without heirs.

The reason why the grant of a rent out of lands to a man and his heirs determines on his death without heirs, is, because such grants are, as it is termed in the law-books, *against common right;* Co. Lit. 147. b.: that is, they were against the policy of the feudal structure, Gilb. Rents. 133. For, in their original creation, they were against the reason and policy of that law; since they were so far from contributing to the strength of the kingdom, that they really weakened it, because the tenant, whose land was subject to such charge, was the less able to provide himself for the field, or to perform the duties of the feudal or military tenure; and the grantee of a rent-charge was under no obligation to attend the grantor in the wars, or venture his life for the public, on account of the benefit he received from the grant, as the person who took lands under a feudal donation was obliged to do. Noy's Tenures, 296, 6th ed. It is upon this principle, that when there is not a limitation over in fee, a tenant in tail of a rent acquires, by his recovery, (or rather now, by his enrolled conveyance), no more than a base fee, determinable on failure of his issue. But if there be a limitation in fee, after the particular limitation in tail, the grantor has substantially

limited the rent in fee; and therefore it is doing him no injustice that the donee should be enabled by his act to acquire an estate in fee-simple. Butl. n., Co. Litt. 298. a., (2).

Interest on arrears of annuity.

Interest on arrears of Annuity.]—[The early decisions as to the allowance of interest upon arrears of an annuity, down to the date of the reversal of Lord Commissioner *Eyre's* decision in *Creuze* v. *Lowth*, 4 Br. C. C. 157, 316: *Creuze* v. *Hunter*, 2 Ves. jun. 157, S. C., are not to be relied on as authorities. In *Legatt* v. *Shewell*, Gilb. Eq. Rep. 141, interest was allowed upon a rent-charge, apparently on the ground that the annuity had been secured under a decree of the Court, by the recognizance of the owner of the land, and that the recognizance being in the nature of a bond, the arrears must carry interest as a bond debt would. See *Newman* v. *Auling*, 3 Atk. 579, *Gay* v. *Cox*, 1 Ridgw. 153. In *The Drapers' Company* v. *Davis*, 2 Atk. 211, Lord *Hardwicke* gave interest for twenty-eight years upon an annuity given by will, observing, that there was no certain rule of the Court for giving interest on arrears of an annuity. The first instance in Chancery was in the case of *Ferrers* v. *Ferrers*, Easter Term, Talb. 2, but it had been done in many instances since, and for the most part where it was the bread of a wife or child. See *Litton* v. *Litton*, 1 P. Wms. 541: *Newman* v. *Auling*, 3 Atk. 579: *Power* v. *Bennis*, 2 Ridgw.; P. C. 256: *Creuze* v. *Lowth*, 4 B. C. C. 160. In *Batten* v. *Earnley*, 2 P. Wms. 163, interest was refused on account of the smallness of the sum. In other cases, (*Stapleton* v. *Conway*, 1 Ves. sen. 427: *Duke of Bedford* v. *Coke*, 1 Dick. 178, 2 Ves. sen. 116: *Bignal* v. *Brereton*, 1 Dick. 278: *Anon.* 2 Ves. sen. 661, S. C.), the giving of interest was made to depend on the diligence of the annuitant and the inconvenience suffered by him. In the well-known case of *Styles* v. *The Attorney-General*, 2 Atk. 151, Lord *Hardwicke* refused to give interest on arrears of two annuities granted by the Duke of Wharton to Dr. Young, because the annuities were voluntary. See also *Robinson* v. *Cumming*, 2 Atk. 409: *Morris* v. *Dillingham*, 2 Ves. sen. 170: *Gay* v. *Cox*, 1 Ridgw. P. C. 153; *Morgan* v. *Morgan*, 2 Dick. 643: *Tew* v. *Lord Winterton*, 2 Br. C. C. 488: *O'Donnell* v. *Browne*, 1 Ball & B. 262. In *Creuze* v. *Lowth*, 4 Br. C. C. 316: *Creuze* v. *Hunter*, 2 Ves. jun. 157, S. C. Lord *Loughborough* refused to give interest on arrears of an annuity in lieu of dower, from the time the Master's report was confirmed. It was contended that the effect of the confirmation of the Master's report was equal to that of a judgment, which his Lordship admitted might be, but at law no interest could be recovered upon the

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Interest on arrears.

sum liquidated by the judgment. The course was that debts carrying interest had interest computed by the report down to actual payment, as well after the Master's report as before; but simple contract debts not carrying interest had no interest computed by the Master, or, after the debts were liquidated by the report, by order from the date of the report. See *Anderson* v. *Dwyer*, 1 Sch. & Lef. 301: *Aylmer* v. *Aylmer*, 1 Molloy, 87. In *Mellish* v. *Mellish*, 14 Ves. 516, it was laid down that interest could not be given upon arrears of maintenance or jointure. In *Booth* v. *Leycester*, 1 Keen, 247, interest was refused upon arrears of annuities, some of which were rent-charges secured by powers of distress and entry, and other annuities secured by covenant and judgments. "In the older cases," said Lord *Langdale*, M. R., "the Court considered that it was a matter of discretion to give or refuse interest on the arrears of annuities. That notion has long been exploded, and it has been considered that a special case is necessary. If the annuitant is delayed in his proceedings at law by the interposition of this court at the instance of the debtor, or if the debtor seeks the aid of this court to relieve him from the hardship to which he may be exposed at law, this court will allow interest on the arrears." Upon the wording of the clause of entry in that case, that the annuitant should hold until, not only the arrears of the annuity, but all such costs, losses, charges, *damages*, and expenses, as should be occasioned by non-payment of the annuity at the times stipulated; and upon similar expressions in the proviso for cesser of the term, it was contended that a contract for interest arose. But Lord *Cottenham*, C., in affirming the decree of the Master of the Rolls, said, "If the parties had intended to contract for interest, it would have been very easy for them to do so. Damages may no doubt be an equivalent for interest, but the two things are not only not the same, but are of a precisely opposite nature. Interest contracted for is due under the contract and in pursuance of it, but damages on a compensation for a breach of the contract. It is impossible that the parties could have intended by these terms to contract for the payment of interest upon arrears, and a reference to other parts of the deed puts this beyond all doubt." (*a*)]

Booth v. *Leycester.*

["If, upon the second part of the argument, namely, that if the annuitant had pursued his remedy at law, he might have obtained interest, and that he ought therefore to be allowed it in equity, it be meant that the deed gave him at law a right to interest, that is

(*a*) [See *Bell* v. *Free*, 1 Swanst. 90.]

answered by the observations I have made upon the deed itself. But if it be meant that if the annuitant, or his trustee, had obtained possession under the powers in the deed, this Court would not have relieved the grantor against such possession without payment of interest upon the arrears, that argument is answered by the fact, that the grantor, or those who derive title through him, are not in this suit seeking any such relief; that the grantee never did avail himself of his legal remedies, but is now applying to this Court for relief, and the authorities shew that in such a case this Court does not give interest upon arrears of annuities."

Interest on arrears.

["Upon this subject, *Robinson* v. *Cumming*, 2 Atk. 409, is precisely in point; that was the grant of an annuity to a stranger who had by his deed a right to enter, and to hold till all arrears, costs, and damages were satisfied. Lord *Hardwicke*, however, held that he was not entitled to interest, and said there was no instance in which the Court had allowed interest upon the arrears of such an annuity; although if the annuitant had entered, and been in possession of the estate, the Court would not have obliged him to quit possession unless the grantor had agreed to allow him interest on the arrears of the annuity."]

Interest on judgment.

["The second ground upon which interest is claimed, is, that there are judgments in a penal term given to secure the annuities, and that the annuitant, if he had proceeded upon the judgments, might have recovered interest in the shape of damages. Now it is, in the first place, to be observed that by the annuity deed satisfaction is to be entered upon on the judgments, on payment of the arrears, 'and all such costs, damages, and expenses as aforesaid;' and that it is not the party liable to the judgments, but the annuitant, who is applying to the Court. The judgment is not given for a debt due, but to secure the performance of the contract, and the annuitant never used that remedy for that purpose. He has preferred this Court, and must rest satisfied with that which the justice of this Court will give. It is quite clear that the general rule in this Court is not to allow interest upon judgments in administering assets. From *Deschamps* v. *Vanneck*, 2 Ves. jun. 716, to *Gaunt* v. *Taylor*, 3 Myl. & K. 302 (*a*), no doubt appears to have

(*a*) [Where Sir *J. Leach*, M. R., said, "at law a judgment does not carry interest; but interest may be recovered at law, in the shape of damages by action on the judgment. Interest will also be given at law on a judgment at law, where the effect of the judgment has been impeded by a course of dilatory and vexatious proceedings. Equity in this respect follows the law, and as a general rule a judgment creditor is not allowed interest on his judgment in the Master's office. The same vexatious course of proceeding, which would en-

Interest on judgment.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

existed upon the point, and yet in all cases of judgments actions might have been brought upon them, in which damages in the nature of interest might possibly have been recovered. In *Bedford* v. *Coke*, 1 Dick. 178, the annuitant had a judgment; but Lord *Hardwicke* refused to give interest."]

Interest on arrears.

["In this case the creditor has failed in his attempt to prove that he has been delayed by the absence or conduct of the debtor; the Court has not interfered with his legal right, and the original debt did not bear interest. Under such circumstances there is no authority for allowing interest upon the judgment. In *Morgan* v. *Evans*, 8 Bligh, 777, the House of Lords, reversing a decision of the Court of Exchequer, allowed interest upon a judgment; but in that case the original debt carried interest, and the court deprived the creditor of the possession of the estate. The case of *Ogilvie* v. *Foley*, 2 W. Bl. 1111, seems to shew that the annuitant could not have recovered by way of damages upon his judgment in this case; although that is not the ground upon which my decision proceeds. I am therefore of opinion that the judgments do not entitle the plaintiff to interest; and this disposes of all those annuities not charged upon the estates."]

Stat. 3 & 4 Will. 4, c. 42, s. 28, jury empowered to allow interest upon debts.

[By the statute 3 & 4 Will. 4, c. 42, s. 20, it is enacted, "That upon all debts or sums certain, payable at a certain time or otherwise, (*a*) the jury, on the trial of any issue or on any inquisition of damages, may, if they shall think fit, allow interest to the creditor, at a rate not exceeding the current rate of interest, from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument, at a certain time; or, if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment: provided, that interest shall be payable in all cases in which it is now payable by law." (*b*)]

Hyde v. *Price.*

[In the case of *Hyde* v. *Price*, 8 Sim. 578; 1 C. P. Coop. 193, an annuity had been granted in 1795 for the life of the grantor, se-

title the creditor to interest at law will certainly entitle him to interest on his judgment in equity," 3 Myl. & K. 309.]

(*a*) [See *Attwood* v. *Taylor*, 1 Scott, N. R. 611; 1 Man. & Gr. 279.]

(*b*) [By the next section (29), juries are empowered to give damages in the nature of interest in actions of trover or trespass *de bonis asportatis*, and in actions on policies of assurances. And by sect. 30, interest is to be allowed on all writs of error for the time that execution shall have been delayed. See *Levy* v. *Langridge*, 4 Mee. & W. 337: *Garland* v. *Carlisle*, 5 Cl. & Fin. 355.]

Interest on arrears.

Hyde v. *Price.*

cured by his bond and a judgment. The grantor died intestate in 1810, leaving large arrears due on the annuity, and assets, consisting of a fund in court, which accumulated from that time. In 1834, administration was taken out to the grantor, and the bill was filed. Interest at five per cent. was given by Sir *L. Shadwell*, V. C. "The question," said his Honor, "is a question solely between two persons, who claim as creditors, [there were two annuitants,] and a person who is merely a dry legal administrator; and there is no conflict between the persons who make the claim on the exceptions and other creditors; which, I think, makes a very material difference with respect to a portion of the plaintiff's demand, which may depend upon the discretion of the Court. It appears that the annuities are wholly in arrear; not one farthing has ever been paid, and the fund has gone on increasing for many years; and it is asked, as against the finding of the Master, that the parties accepting may be allowed interest on the arrears of the annuities."]

["I will first consider the case with reference to the law as it stood before the passing of the act of 3 & 4 Will. 4, c. 42. That law is correctly stated in the judgment which was given by Sir *John Leach*, in *Garratt* v. *Taylor*. His Honor says, 'at law a judgment does not carry interest, but interest may be recovered at law in the shape of damages, by an action on the judgment.' It seems to be but reasonable, that, if interest might be recovered at law if an action were brought on the judgment, it ought also to be recoverable in a case where the position of the assets would not render an action on the judgment advisable, but would make a bill in equity the proper remedy. In this case, the bill was filed in the beginning of the year 1834. Then, supposing that the late act had not passed, there is that step taken which is equivalent to the bringing of an action; for, if an action could have been brought at law under such circumstances as affect this case, it would have been extremely reasonable to allow the jury to give interest upon the judgment by way of damages; and it appears to me to be contrary to the plain justice of the case (if this court is to exercise a discretion) that it should not allow these parties interest on the amount of the arrear of the annuities."]

["The case, however, is put in a more favourable position for the exercise of that discretion in favour of the claimants, by reason of the fact, that the act of the 3 & 4 Will. 4, c. 42, was in force when the bill in the second suit was filed. This is a remedial act; and I cannot help thinking that it is absolutely necessary for this Court to adopt many of the provisions of it, as well as of the 27th

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Interest on arrears.

chapter of the same session, changing, of course, the mere formal language, and adapting it to the practice of this court. I think that if, after this statute had passed, an action could have been brought on the judgment, there would be no question but any Judge would have allowed the jury to exercise their discretion upon the point of interest. My opinion, upon the whole, is, that the Master has taken a very narrow view of the case, and that the exceptions to the disallowance of the interest must be allowed. It also seems to me that I must treat this as a legal demand. It is not like the case of a court of equity dealing with a legacy or any other subject of an equitable nature, but it is a mere debt; and I think that, as such, interest at five per cent. should be allowed."]

Interest on a judgment.

[Interest could not generally be recovered at law upon a judgment, *Jarrold* v. *Rowe*, 8 Price, 582, nor in equity, unless there were some special circumstances or hardship, &c., which a mere delay, caused by the progress of the cause, did not amount to; *Lewis* v. *Morgan*, 3 You. & J. 230, 394: *Berrington* v. *Evans*, You. 276; or unless the debtor was applying for relief against the creditor, *infra*, vol. 5, p. 51. But now, by the statute 1 & 2 Vict. c. 110, s. 17, (*infra*, vol. 5, p. 34), interest at *four per cent.* from the time of entering up the judgment, or of the commencement of the act as against the debtor, and from the time of registering the judgment as against the interests of purchasers and mortgagees, with notice, (2 & 3 Vict. c. 11, s. 5), and creditors, in the debtor's lands, (sect. 19), may be levied in execution upon the judgment. The clause only applies to judgments at law. See the cases as to interest on debts, &c. collected, 1 C. P. Coop. 209, *et seq.*]

1 & 2 Vict. c. 110, s. 17.

Difference between a receiver appointed by deed and a receiver appointed by the Court of Chancery.

Receiver.]—The nature of the office, power, and authority of a receiver appointed by deed, and that of a receiver appointed by the Court of Chancery (*a*), are totally different; for, as the first derives his authority wholly from the deed, he cannot go beyond the powers thereby given. The other is an officer of the court, and acts under its direction; and therefore being in many respects guarded and

(*a*) [As to the considerations by which equity is influenced in the exercise of this branch of its jurisdiction, see *Skip* v. *Harwood*, 3 Atk. 564: *Davis* v. *Duke of Marlborough*, 1 Swanst. 83; 2 Id. 125: *White* v. *Bishop of Peterborough*, 3 Id. 117: *Stitwell* v. *Wilkins*, 6 Mad. 48: *S. C. nom. Stillwell*, v. *Wilkins*, Jac. 280: *Rowe* v. *Wood*, 2 Jac. & W. 557: *Tyson* v. *Fairclough*, 2 Sim. & St. 142: *Bertie* v. *Lord Abingdon*, 3 Mer. 560: *Court* v. *Harris*, Turn. & R. 517: *Watkins* v. *Brent*, 1 Myl. & Cr. 97: *Skinners' Company* v. *Irish Society*, Id. 162: *Metcalfe* v. *Archbishop of York*, Id. 547: *Marr* v. *Littlewood*, 2 Myl. & Cr. 454: *Woodyatt* v. *Gressly*, 8 Sim. 180: *Richards* v. *Perkins*, 3 You. & C. 299: *Aberdeen* v. *Chitty*, Id. 379: *George* v. *Evans*, 4 Id. 211: *Wood* v. *Hitchings*, 2 Beav. 289: *Holmes* v. *Bell*, Id. 298.]

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Receiver.

protected by its transcendent authority, he is invested with some powers, which our law of tenures renders impossible for private individuals to confer, by way of authority. The numerous cases to be found in the reports respecting receivers, relate almost exclusively to those appointed by the Court; but the principles which regulate their proceedings have only a partial connexion by analogy to a receiver appointed by deed. It is for the above reason that, in a deed of receivership, the powers and liabilities of the receiver are clearly defined.

The Court will not generally appoint a trustee receiver.

The Court of Chancery will not appoint a trustee a receiver of the estate where he is an accounting party, because he ought to check the receiver. *Anonymous*, 3 Ves. 516. Nor will the court appoint a trustee and executor receiver, although there are others joined with him in the trust; for the testator meant to have the benefit of the exertion and management of all whom he named, and it would be a mode of giving a trustee emolument who ought to manage and receive without gratuity. ——— v. *Jolland*, 8 Ves. 72. And in case the trustee has, either in himself or jointly with another, a power of leasing, the *cestui que trust* would lose the benefit of the trustee's knowledge and superintendance as a check, and he would be exposed to the temptation of immediate increase of emolument by an immediate increase of rent; and one of the principal duties of the Court is, to take care that the most shall be made of the estate during minority, with a view to the interest of the inheritance, not the immediate income. *Sutton* v. *Jones*, 15 Ves. 588. Therefore, if a trustee has been appointed a receiver by the Master, the Court will discharge the receiver from his office. 8 Ves. 73. However, the Court will appoint a trustee receiver, if he will act without emolument; and, if no other person can be procured, the Court will appoint a trustee receiver with emolument. *Sykes* v. *Hastings*, 11 Ves. 364. [It is now settled, however, that an executor and trustee may be appointed consignee or receiver with the usual profits. *Marshall* v. *Holloway*, 2 Swanst. 452: *Morison* v. *Morison*, 4 Myl. & Cr. 215.]

A nominal trustee may be a receiver.

It is no objection to a trustee being appointed a receiver if he be a trustee merely for preserving contingent remainders, or if he be a trustee with a power of sale and exchange at a future period, and which cannot be exercised during his receivership. *Sutton* v. *Jones*, 15 Ves. 587. [The solicitor in the cause cannot be a receiver; *Garland* v. *Garland*, 2 Ves. jun. 137: *Wilson* v. *Poe*, 1 Hog. 322; nor the *prochein ami* of infant plaintiffs; *Stone* v.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Wishart, 2 Mad. 64; nor can a peer. *Attorney-General* v. *Gee*, 2 Ves. & B. 208.

Where the parties beneficially interested are *sui juris* at the time, a trustee may be appointed receiver by deed; but it is not usual.

These equitable principles do not, however, extend to a receiver appointed by deed, where the persons beneficially interested at the time are *sui juris;* and therefore in an annuity, mortgage, or any other transaction, a trustee of the estate may be appointed a receiver; but, in that case, the amount of the compensation which he is to have as receiver should be distinctly stated in the deed; for, as trustee, he is entitled to no allowance for his trouble, unless there be in the deed a special provision for that purpose. However, it is not usual in practice, in any case, to appoint a trustee receiver by deed, although there appears to be no other objection to such an appointment than the seeming impropriety of uniting in the same person two apparently incompatible offices; but which objection might, perhaps, in some instances, not appear to the parties interested to be of a very formidable nature.

A mortgagee cannot be a receiver with a salary.

A mortgagee cannot stipulate to be receiver of the rents and profits with a commission. In one case it has been considered by the Court of King's Bench usurious. *Scott* v. *Brest*, 2 T. R. 238. But it has long been determined in the Court of Chancery, that, though a mortgagee may stipulate for a receiver to be paid by the mortgagor, and may appoint a bailiff, &c., yet he cannot himself stipulate for any advantage beyond the interest. And though it seems to make little difference to the mortgagor who is the receiver, yet the Court of Chancery considers it as tending to usury and oppression, and a collateral advantage which a man contracting for a loan of money shall not make. *Chambers* v. *Goldwin*, 9 Ves. 272: *French* v. *Baron*, 2 Atk. 120: [*Leith* v. *Irvine*, 1 Myl. & K. 277; *infra*, Vol. 5, p. 402.]

Annuitant is not usually appointed as receiver.

But, on principle, that objection cannot extend to an annuitant, because the annuity is not in the nature of a loan. However, it is not usual to appoint the annuitant the receiver.

The person having the legal estate may appoint a receiver with an allowance.

If no receiver has been previously appointed, and from the nature of the property one be requisite, the person having the legal estate may appoint a receiver when the annuity becomes in arrear. *Jenkins* v. *Milford*, 1 Jac. & Walk. 630. For a mortgagee in possession, or a trustee, and consequently an annuitant, where he is himself the trustee, is not bound to be his own bailiff; and if either of them manage the estate himself, there is no allowance made to him for his care and pains; but if either of them employ a skilful bailiff, and for his trouble give him a reasonable compensation out

A mortgagee or trustee has no allowance for his trouble.

Receiver's salary.

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Receiver's salary.

of the rents and profits, the Court of Chancery allows of the payment. *Bonithon* v. *Hockmore*, 1 Vern. 316. The most usual remuneration to a receiver appointed by deed is one shilling in the pound on the rents received, which sum has been allowed by the Court, where the rents arose from several small houses; *Davis* v. *Dendy*, 3 Madd. 170; but where the rent arises from large farms, sixpence in the pound is sometimes the stipulated allowance. [In the case of *Day* v. *Croft*, 2 Beav. 488, where the sums received consisted partly of gross sums paid by mortgagees and annuitants for principal money, and partly of interest and dividends of stock, and rents of leasehold houses, some difficult to be collected and others not, it was held that 5*l.* per cent. on the gross amount of the sums so collected was too large an allowance:—Lord *Langdale*, M. R., said, that he had made inquiries of the Masters on the subject, and all of them had sent him certificates. He found that there was no general rule. Most frequently, where there were rents of freehold or leasehold estates to be received, a sum of 5*l.* per cent. on the amount of the receipts was allowed. If there was any special difficulty, on account of the tenements being extremely small, and the payments frequent, as weekly payments, and the like, an addition to the 5*l.* per cent. was allowed; but if there was very great facility in receiving the rents, less than 5*l.* per cent. commission was allowed. One of the Masters had certified to him a case in which he had allowed only 4*l.* per cent. for the receipts of the rents and profits of freehold and leasehold estates. Another had mentioned a case where there was only a single rent of 300*l.* a-year to be received, and in which the receiver for the first year was allowed much more than in the succeeding years. So that there was no general and universal rule that 5*l.* per cent. should be allowed for the receipt of the rents and profits,—the allowance in cases of extraordinary difficulty being increased; and, in cases of extraordinary facility, diminished. Generally speaking, in the greater number of instances, they were allowed 2*l.* 10*s.* per cent. for receiving gross sums; but, on many occasions, that was reduced to 1*l.* 10*s.* per cent. It therefore appeared, that the Masters, as indeed they ought, considered what was fit and proper to be allowed, having regard to the trouble and the degree of responsibility of the receiver. In this case, the particular circumstances and nature of the items were not brought to the Master's attention; and there being nothing before him to induce him to deviate from the general rule, he allowed 5*l.* per cent. Under all the circumstances, he thought he ought to refer it back to the Master to re-

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

view his report. A trustee or an executor, having no allowance for his trouble, is allowed many charges and expenses which a receiver, who has a salary, is not allowed. *Potts* v. *Leighton*, 15 Ves. 276. But a trustee may be allowed a compensation for his trouble, if there be an express provision for that purpose in the deed creating the trust; but not, it seems, if the agreement for an allowance to a trustee be subsequent, except it be under extraordinary circumstances. *Gould* v. *Fleetwood*, 3 P. Wms. 251, n.: *Ayliffe* v. *Murray*, 2 Atk. 60. It is otherwise as to a mortgagee. *Chambers* v. *Goldwin*, 9 Ves. 272. And where the mortgagee was the attorney of the mortgagor, and in an account settled between them had charged poundage for having received the rents, which were very small, and the collection troublesome, and in consequence thereof the mortgagee was entitled to have a receiver at the mortgagor's expense, yet Sir *Wm. Grant*, Master of the Rolls, disallowed the charge; "for," he said, "the Court does not permit a man to get out of the rule by shewing that he was in a situation in which it would have been justifiable to have had a receiver appointed. He is not permitted to shew that cause did exist. Nothing is considered as evidence that the appointment of a receiver was necessary, but that appointment itself; and the Court takes the circumstances that a receiver was not appointed, as evidence that a receiver was not necessary. As to the acquiescence, whatever may be the effect of acquiescence in general, the relation of these parties prevents it in this instance: the one an attorney, and not only an attorney, but the attorney of the other party. The former was acquainted with the rule of the Court, the other was not. It was the duty of the attorney to inform his client that he was not to allow that charge, if another person had been the mortgagee; informing him also that the appointment of a receiver would be the consequence; but that was for the consideration of the client, so informed. In this case that information was not given to the client. The mortgagee claimed this allowance as of right, not stating the objection. The mortgagor allowed it, not aware of the objection; in that article, therefore, the account is impeached as erroneous. I do not enter into the distinction between the cases of an article allowed from ignorance of the law, and from ignorance of the fact. The reason of the admission is not material. He has not given his assent; that is, what the Court holds a binding assent. I do not mean to say generally, that ignorance of the law will open an account; but, as between these parties, standing in this relation to each other, liberty must be given to surcharge

A trustee may be allowed for his trouble under an express provision:

but a mortgagee cannot in any case.

and falsify. *Langstaffe* v. *Fenwick*, 10 Ves. 405. So in *Carew* v. *Johnston*, 2 Scho. & Lef. 301, an ex parte report of the Master charged receiver's fees; but Lord *Redesdale* said, a mortgagee is not entitled to receiver's fees for himself; he is, if he pays a receiver. But the evidence was, that he received for himself. This, therefore, was fraudulently erroneous, and taking an advantage to himself which the mortgagee had no right to.

Formerly thought that a mortgagee should be allowed for a receiver, only where the estate was at a distance;

but the necessity of a receiver seems principally to depend on the degree of trouble necessary to collect the rents.

In *Godfrey* v. *Watson*, 3 Atk. 518, Lord *Hardwicke* said, that a mortgagee shall not be allowed for his trouble in receiving the rents of the estate himself; but if an estate lies at such a distance from the place of his residence that he must have employed a bailiff if it had been his own, he shall then be allowed such sums as he has paid to a bailiff to receive the rents of this estate. The modern rule does not seem to depend so much on the degree of distance of the estate from the residence of the mortgagee, &c., as the degree of trouble. Thus, where a mortgage of twenty leasehold houses in the parish of St. Andrew, Holborn, was assigned to a trustee who lived in Chancery Lane, near the houses, in trust for a person (since deceased) who resided at Dorking; Sir *John Leach*, Vice-Chancellor, said, "a mortgagee cannot be paid as a receiver, nor can he generally and universally, when he takes possession, appoint a receiver. But if the nature of the estate be such, that great time and trouble must be sacrificed in the receipt of the rents, he may appoint a receiver. Here the mortgagee resided at Dorking, and the mortgaged property was of such a description, that a provident owner of the estate, whose time was of value to him, would probably have thought it right to appoint a receiver. The trustee's residence is immaterial: he was not the person beneficially entitled, nor the person to receive the rents. The charge, therefore, in respect of a receiver during the life of the assignee of the mortgagee, must be allowed. The testator died in 1810, and appointed the defendants executors and residuary legatees. The latter circumstance I lay out of the question. After the death of the assignee of the mortgagee, the executors received the rents up to the year 1813, and then appointed a receiver. As the assignee of the mortgage could not have charged for a receiver, if he had himself received the rents, so his executors, so long as they received the rents, can make no charge for a receiver: but they may charge from the time when they appointed a receiver." *Davis* v. *Dendy*, 3 Madd. 172.

The trustee's residence is immaterial.

Executors of a mortgagee cannot charge for a receiver while they received the rents.

[If a portion of the estate can be got in without passing through the hands of the receiver, the Court will allow it to be done in

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

order to save the receiver's poundage. *Haigh* v. *Grattan*, 1 Beav. 201.]

Persons appointing a receiver without authority answerable for his deficiencies;

Trustees and executors, not beneficially interested, cannot be generally advised to appoint a receiver, where they have no authority for that purpose; for, unless the deed or will authorizes the appointment, the trustee or other person appointing the receiver will be answerable for him in all events. *Anonymous*, 12 Mod. 560.

but where the deed authorizes an appointment, it is otherwise.

But if the deed or will authorizes the appointment of a receiver or agent, and one be appointed, who at the time of his appointment is solvent and in good circumstances, though he should afterwards become insolvent, the person appointing shall not answer for him. However, it is otherwise if he were not solvent at the time he was appointed. 12 Mod. 560.

But if the receiver be permitted to retain the rents an unreasonable time and become insolvent, the estate will be discharged from the loss.

But where a debtor conveyed an estate to two trustees, appointed by his creditors in pursuance of a previous agreement, and the creditors permitted the acting trustee to retain in his hands, for about three years, a sum belonging to the trust fund, which he had received out of the rents of the estate; Lord *Manners* held, on the trustee's bankruptcy, that, as the debtor did not appoint the trustees, and had no power to remove them, the loss must fall on the creditors. For the creditors being the persons most interested in the conduct and punctuality of those trustees, and in the manner the rents were to be applied, the trustees must therefore be considered as the agents of the creditors who appointed them. *Hutchinson* v. *Lord Massareene*, 2 Ball & Bea. 54. See also *Anonymous*, 1 Salk. 153: *Juxon* v. *Brian*, Prec. Chan. 143: *Carter* v. *Barnardiston*, 1 P. Wms. 518.

Chancery receivers must pass their accounts annually.

Receivers appointed by the Court of Chancery are to pass annual or half-yearly accounts, as the rents and profits are received. *Potts* v. *Leighton*, 15 Ves. 577. [See *Shaw* v. *Rhodes*, 2 Russ. 539: *Shewell* v. *Jones*, 3 Id. 522.] And by the general order of the Court, 23rd April, 1796, 15 Ves. 278, receivers must annually pass their accounts and pay in their balances, or lose their salaries and be charged with interest at 5 per cent.; ——— v. *Jolland*, 8 Ves. 72: *White* v. *Lady Lincoln*, 8 Ves. 571; although the money be only kept back a quarter of a year after it ought to have been paid in. *Fletcher* v. *Dodd*, 1 Ves. jun. 85. Receivers appointed by deed are not subject to this rule, and therefore it is always prudent to call on them to account regularly as the money is received. [Nor does the general order apply after a receiver has been discharged; but the Court will act upon the same principle. See *Harrison* v. *Boydell*, 6 Sim. 211. The Court cannot order in a summary way

the executor of a deceased receiver to bring in and pass his testator's accounts, and to pay the balance to be found due out of the assets. *Jenkins* v. *Briant*, 7 Sim. 171.]

[By the 63rd general order of 1828, the Master, in acting upon the above order, may, upon the appointment of a receiver, or at any time afterwards, fix, in place of annual periods, either longer or shorter periods for the delivery of his accounts and payment of balances.]

As to arrears, &c. due at receiver's appointment.

[A receiver, when appointed by the Court, is entitled to all the rents in arrear; but where a receiver had been appointed at the instance of a mortgagee of a West India estate, it was held, that he was not entitled to the produce of crops severed and shipped to the mortgagor's consignee previously to the appointment, but not received or sold until after that time. *Codrington* v. *Johnstone*, 1 Beav. 520.]

The estate must bear a loss occasioned by a receiver appointed by the Court.

In *Rigge* v. *Bowater*, 3 Bro. C. C. 365, Lord *Thurlow* intimated his opinion, (without deciding the case), that if a receiver be appointed by the Court, upon the application of a mortgagee or other incumbrancer, and he afterwards embezzle or otherwise waste the rents and profits, the loss must fall on the mortgagor. The reason is, it seems, the receiver is the officer of the Court. 2 Ball & Bea. 55.

If the mortgagee has the legal estate, the Court will not appoint a receiver.

If a prior mortgagee be not in possession, the Court will appoint a receiver for a subsequent mortgagee, without prejudice to the first.

However, if there be no receiver appointed by the deed, and the mortgagee has the legal estate, he cannot have a receiver appointed by the Court of Chancery, but he must recover the possession by ejectment. *Berney* v. *Sewell*, 1 Jac. & Walk. 648. Yet if there be a prior mortgagee who is not in possession, a second or equitable mortgagee may have a receiver appointed by the Court, without prejudice to the prior mortgagee's taking possession; but if he be in possession, the second mortgagee cannot have a receiver appointed: he must redeem him; and then in taking the accounts, the prior mortgagee will not be allowed any sums he may have paid over to the mortgagor, after notice of the subsequent incumbrance. Id. 649: *Bryan* v. *Cormick*, 1 Cox, 423: *Dalmer* v. *Dashwood*, 2 Cox, 378: *Quarrell* v. *Beckford*, 13 Ves. 377: *Parker* v. *Calcraft*, 6 Madd. 11. [And see *post*, Vol. 5, p. 456; and *Rowe* v. *Wood*, 2 Jac. & W. 557. An equitable incumbrancer may have a receiver notwithstanding the mortgagor is out of the jurisdiction. *Tanfield* v. *Irvine*, 2 Russ. 149. See *Gibbons* v. *Mainwaring*, 9 Sim. 77: *Holmes* v. *Bell*, 2 Beav. 298.]

Generally, a distress for rent must be made by, or in the name of

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Receiver.

the person appearing to have the immediate legal estate in reversion, *Pitt* v. *Snowden*, 3 Atk. 750: *Hughes* v. *Hughes*, 3 Bro. C. C. 87, as he alone possesses a privity of estate with the tenant in possession; 1 Ves. jun. 161, *S. C.*; and who, consequently, is the tenant of the person having that legal estate. *Griffith* v. *Griffith*, 2 Ves. sen. 401. So that if, when an annuity is granted, &c., and secured by a demise to a trustee, and the grantor appoints a receiver by way of additional security, the trustee do not join in the demise to the receiver, the receiver must distrain as his bailiff; in which case if there be no previous authority, a subsequent assent would excuse him from being punished as a trespasser. 2 Leon. 196. But a previous authority in writing is always desirable when a distress is made by a bailiff; for he ought, if he be required, to shew the cause why he made the distress; yet if he be not required, then he is not bound to shew it. And if the bailiff, upon making the distress, shews the cause and reason of it, he cannot afterwards vary from it: but if he distrain generally, without shewing any cause, then he is at liberty afterwards to shew what cause he thinks fit. *Buller's case*, 1 Leon. 50. [See further, Serjt. Wms. n., 1 Saund. 347 c. (4).] To prevent the necessity of having an express authority from the trustee or his representatives, every time a distress is made, and to prevent the trouble and delay which must be thereby occasioned, it seems prudent invariably to make the trustee a party to the appointment, if it be in the nature of a power of attorney.

Prudent to make the appointment by a demise of the trustee and grantor.

But, as it appears that an appointment of a receiver by demise is preferable to a simple appointment in the nature of a power of attorney, and as the trustee has the immediate legal estate in reversion, expectant on the estates of the tenants in possession, it seems generally prudent to make the trustee a party to the demise to the receiver.

So, if the appointment of a receiver be in the annuity or mortgage deed, and an attendant term is assigned or noticed in the same deed, it seems, for the above reasons, equally necessary that the trustee of the attendant term should join in the appointment or demise, whichever form be adopted.

But if an annuity is charged, or a mortgage made on an estate which has been previously incumbered, and the person having the legal estate will not join in the demise to the receiver, where, from the nature of the property, it is desirable to have one, then he is sometimes appointed without a demise; and the prior charges are

either recited in the deed, or stated by way of schedule, and the receiver directed to apply the rents, in the first place, in paying the prior charges, and, in the next place, in paying the annuity or mortgage. This may be done either by the annuity, or mortgage deed, or by a separate deed, according to the circumstances.

So, a receiver of copyholds is always appointed by a deed in the nature of a power of attorney.

Distress by receiver.

It seems that as to any lease made before the conveyance in trust to secure the annuity, &c., or as to any lease made afterwards by the grant or by parol, or by deed not indented (*a*), or as to a tenant from year to year, the receiver may distrain as the attorney of the trustee alone, as he has the immediate legal estate in reversion: and that as to any lease made by the grantor only by indenture, after the conveyance in trust to secure the annuity, the receiver may distrain as the attorney of the grantor alone, because the lessee would be estopped by the indenture from pleading that his grantor had not the legal estate. Wms. n., 2 Saund, 410 a. [And if a receiver who has no estate grants a lease, the lessee is estopped from objecting to his right to distrain. *Dancer* v. *Hastings*, 4 Bing. 2.] But the authority of the receiver ceases as to each of the persons appointing, on their respective deaths.

Receiver's right to possession, &c.

[A receiver is entitled to the possession of the estate, holding it where the right is in dispute for the party who in the end proves to be entitled. *Sharp* v. *Carter*, 3 P. Wms. 375. But he cannot bring ejectment against any tenant without the authority of the court; *Wynn* v. *Lord Newborough*, 3 Br. C. C. 88; 1 Ves. jun. 164; and, though it is a contempt to bring ejectment against him, (*Angel* v. *Smith*, 9 Ves. 338: see *Johnes* v. *Claughton*, 1 Jac. 572: *Brooks* v. *Greathead*, 1 Jac. & W. 148), he cannot defend any action without leave. Ib. *Brooks* v. *Greathead*, 1 Jac. & W. 178: *Swaby* v. *Dickon*, 5 Sim. 629: *Malcolm* v. *O'Callaghan*, 3 Myl. & Cr. 52. But he may distrain for rent in arrear; *Brandon* v. *Brandon*, 5 Madd. 473; but not for arrears beyond the year. Ib.]

It is prudent to authorize him to pay for repairs, &c.

A Chancery receiver can only expend a small sum at his own discretion.

It seems prudent to authorize the receiver to pay taxes, &c., and the expenses of repairs. For without an express authority he cannot make those payments. The Court of Chancery will not permit a receiver appointed by the Court to lay out more than a very small sum at his own discretion, *Waters* v. *Taylor*, 15 Ves. 26, without a previous application to the Court. *Attorney-General* v. *Vigor*, 11

(*a*) [*i. e.* by deed to which the lessee is not a party, for the mere indenting of a deed is immaterial to its effect as an estoppel. *Infra*, Vol. 4, p. 128.]

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Receiver.

Authority of receiver as to management, expenditure, &c.

Ves. 563. But where the Master reported that a previous expenditure was for the lasting benefit of the estate, and it was made by the direction of the trustees, an order for the allowance was made. *Blunt* v. *Clitherow*, 6 Ves. 799. [See further as to extraordinary expenditures, &c. by a receiver, *Malcolm* v. *O'Callaghan*, 3 Myl. & Cr. 52: *Keys* v. *Keys*, 1 Beav. 425. By the 64th Gen. Ord. in the 3rd April, 1828, it is ordered "that in every order directing the appointment of a receiver of a landed estate, there be inserted a direction that such receiver shall manage as well as set and let, with the approbation of the Master, and that in acting upon such order it shall not be necessary that a petition be presented to the Court in the first instance, but the Master, without special order, shall receive any proposal for the management or letting of the estate from the parties interested, and shall make his report thereon, which report shall be submitted to the Court for confirmation in the same manner as is now done with respect to reports on such matters made upon special reference; and until such report be confirmed it shall not give any authority to the receiver."]

[By an order of March, 1839, (4 Myl. & Cr., App. i.), provision is made for proceeding under the act for the commutation of tithes, (6 & 7 Will. 4, c. 71, s. 12), in cases where a receiver has been appointed.]

An ejectment cannot be brought either by or against a Chancery receiver without leave of the Court; but it may by or against a receiver appointed by deed.

Although a receiver appointed by the Court of Chancery cannot proceed in ejectment against the tenants of the estate, without application to the Master of the Court, yet a receiver, who has a term conferring on him the immediate reversion, may maintain an ejectment in his own name, or a receiver under a power of attorney may maintain an ejectment in the name of the person appointing him, if such person has the immediate legal estate in reversion. So, an ejectment cannot be brought against the tenants in possession, where there is a receiver appointed by the Court of Chancery, without the leave of the Court, under the pain of being committed for a contempt; *Anonymous*, 6 Ves. 287: *Angel* v. *Smith*, 9 Ves. 340; but it is, of course, otherwise where a receiver is appointed by deed.

Receiver not answerable for involuntary losses.

A receiver, whether appointed by the court or by deed, is not answerable for involuntary losses. *Knight* v. *Lord Plymouth*, 3 Atk. 480; 1 Dick. 120: *Rowth* v. *Howell*, 3 Ves. 566: *Ex parte Belchier*, Amb. 218: *Wren* v. *Kirton*, 11 Ves. 377 (*a*). [See *Wood* v. *Wood*, 4 Russ, 558: *Keys* v. *Keys*, 1 Beav. 425.]

(*a*) [As to the case of *Wren* v. *Kirton*, see *White* v. *Baugh*, 3 Cl. & Fin. 44: *Salway* v. *Salway*, 2 Russ. & M. 215.]

NATURE AND INCIDENTS OF ANNUITIES IN GENERAL.

Receiver.

[J In the case of *Salway* v. *Salway*, 4 Russ. 60, an attempt was made to fix a receiver, appointed by the court, with a loss arising from the failure of bankers, on the ground, among others, that he had placed the money under the control of other persons, and that interest had been made and proved on it; but, as it appeared that the money had been merely placed to the joint account of the receiver's sureties, in order to insure its due appropriation, and as the receiver himself was ignorant that interest had been made on it, not being aware that the bankers allowed interest on deposit notes; Sir *J. Leach*, M. R., held that the receiver was not, on these accounts, responsible for the loss. The debt, including interest, had been proved against the bankers' estate by one of the sureties.J] [But the decision of the Master of the Rolls was, on appeal, reversed by Lord *Brougham*, C., and that reversal was affirmed by the House of Lords. *Salway* v. *Salway*, 2 Russ. & M. 215: *White* v. *Baugh*, 3 Cl. & Fin. 44; 9 Bligh, 181, *S. C.* "I could not," said Lord *Brougham*, "affirm the decision of the Court below without laying down this rule—that a receiver under the control of the Court, and paid out of the estate, is nevertheless entitled to substitute for his own discretion, responsibility, and integrity, the discretion, responsibility, and integrity of a stranger. Will it be said that he is able to exercise that discretion when he has tied up his own hands, and can no longer exercise it himself, but must apply for the consent and co-operation of another? The control was not given without an object, for it was given partly to induce the sureties to undertake the responsibility." And Lord *Lyndhurst* observed, that the Court exercises a much stricter vigilance over receivers whom it appoints, and who are paid for the performance of their duty, than even ordinary trustees.]

Receiver must not delegate his powers of control.

2. Provisions of the Annuity Act.

ANNUITY ACT.

[J In order to ascertain the state of the law with respect to annuities granted for a pecuniary or other valuable consideration, it is necessary to examine in detail the provisions of the important statute of the 53 Geo. 3, c. 141, which after repealing the preceding Annuity Act of the 17th of George the Third, c. 26 (*a*), except so

53 Geo. 3, c. 141.

(*a*) The repealed statute, 17 Geo. 3, c. 26, enacted, sect. 1, "That a memorial of every deed, bond, instrument, or other assurance, whereby any annuity or rent-charge shall be granted for one or more life or lives, or for any term of

Stat. 17 Geo. 3, c. 26.

ANNUITY ACT.

far as regards any annuities granted before the passing of the act, by section 2 provides, "That within thirty days after the execution of every deed, bond, instrument or other assurance, whereby any annuity or rent-charge shall, from and after the passing of this act, be granted *for one or more life or lives*, or for any *term* of years *or greater estate determinable on one or more life or lives*, a memorial of the date of every such deed, bond, instrument, or other assurance, of the names of all the parties and of all the witnesses thereto, and of the person or persons for whose life or lives such annuity or rent-charge shall be granted, and of the person or persons by whom the same is to be beneficially received, the pecuniary consideration or considerations for granting the same, and the annual sum or sums to be paid, shall be inrolled in the High Court of Chancery, in the form or to the effect following, *with such alterations therein as the nature and circumstances of any particular case may reasonably require*—

within thirty days, grants of annuities to be inrolled in Chancery.

Form of memorial.

Repealed stat. 17 Geo. 3, c. 26.

years, or greater estate, determinable on one or more life or lives, shall within twenty days after the execution of such deed, &c., be inrolled in Chancery, and that such memorial shall contain the day of the month and the year when the deed, &c. bears date, and the names of all the parties, and for whom any of them are trustees, and of all the witnesses, and shall set forth the annual sum or sums to be paid, and the name of the person or persons for whose life or lives the annuity is granted, and the consideration or considerations of granting the same, otherwise every such deed, &c., shall be null and void."

Sect. 2 required a like memorial as to annuities already granted.

Sect. 3 provided, that "the consideration really and *bonâ fide*, (which shall be in money only), and also the name or names of the person or persons by whom and on whose behalf the said consideration, or any part thereof, shall be advanced," should be "fully and truly set forth and described in words at length," or the deeds to be void.

Sect. 4. "If any part of the consideration shall be returned to the person advancing the same, or in case the consideration, or any part of it, is paid in notes, if any of the notes, with the privity and consent of the person advancing the same, shall not be paid when due, or shall be cancelled or destroyed without being first paid, or if the consideration, or any part of it, is paid in goods, or if any part of the consideration is retained on pretence of answering the future payments of the annuity, or any other pretence, it shall be lawful for the person by whom the annuity or rent-charge is made payable, to apply to the Court, in which any action is brought for payment of the annuity or judgment entered, by motion to stay proceedings on the judgment or action; and if it shall appear to the Court that such practices as aforesaid, or any of them, have been used, it shall and may be lawful for the Court to order the deed, bond, instrument, or other assurance, to be cancelled, and the judgment, if any has been entered, to be vacated."

Sect. 5 made regulations as to the inrolment.

Sect. 6. All contracts for the purchase of any annuity with any person under twenty-one to be void, notwithstanding any attempt to confirm the same after twenty-one; and persons

Date of Instrument.	Nature of Instrument.	Names of Parties.	Names of Witnesses.	Name or Names of Person or Persons by whom Annuity or Rent-charge to be beneficially received.	Person or Persons for whose life or lives the Annuity or Rent-charge is granted.	Consideration, and how paid.	Amount of Annuity or Rent-charge.
10 August, 1813.	Indentures of Lease and Release }	A. B. of one part. C. D. of other part.	E. F. of——, G. H. of——.	C. D.	A. B.	£100 paid in money, £500 paid in notes of the governor and company of the Bank of England, or other notes or bills of exchange, as the case may be.	£100 a year.
same date.	Bond in Penalty of £1200.	A. B. to C. D.	E. F. G. H.	For securing the same Annuity or Rent-charge.			
same date.	Warrant of Attorney to confess Judgment on the same Bond.	A. B. to I. K. & L. M. Attornies of Court of King's Bench.	E. F. G. H.				

ANNUITY ACT.
Stat. 53 *Geo.* 3.

otherwise every such deed, bond, instrument, or other assurance, shall be null and void to all intents and purposes."

Companies to be described by their usual firm.

Sect. 3. "That if any such annuity shall be granted by or to or for the benefit of any company exceeding in number ten persons, which company shall be formed for the purpose of granting or purchasing annuities, it shall be sufficient in any such memorial to describe such company by the usual firm or name of trade."

Names of parties beneficially interested to be stated.

Sect. 4. "That in every deed, bond, instrument, or other assurance, whereby any annuity or rent-charge shall, from and after the passing of this act, be granted or attempted to be granted for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, where the person or persons to whom such annuity shall be granted or secured to be paid, shall not be entitled thereto beneficially, the name or names of the person or persons who is or are intended to take the annuity beneficially, shall be described in such or the like manner as is hereinbefore required in the inrolment, otherwise every such deed, instrument, or other assurance shall be null and void."

Copies of the deeds or instruments securing such annuities may be obtained.

Sect. 5. "That in case any person or persons by whom any annuity or rent-charge of which such particulars as aforesaid are hereby required to be inrolled shall for the time being be payable, shall be desirous of obtaining a copy of every or any deed, bond, instrument, or other assurance, whereby such annuity or rent-charge was granted, and of such his, her, or their desire shall give twenty-one days' notice in writing to the person or persons for the time being entitled to such annuity or rent-charge, such person or persons shall, on or before the expiration of such twenty-one days, unless prevented by fire or other inevitable accident, and in that

dealing with infants to be guilty of a misdemeanor.

Sect. 7. Solicitors, &c., charging for brokerage more than 10*s.* for every £100, guilty of a misdemeanor.

Sect. 8 provided "That nothing in this act contained shall extend to any annuity or rent-charge given by will, or by marriage settlement, or for the advancement of a child; nor to any annuity or rent-charge secured upon lands of equal or greater annual value, whereof the grantor was seised in fee-simple or in fee-tail in possession at the time of the grant, or secured by the actual transfer of stock, in any of the public funds, the dividends whereof are of equal or greater value than the said annuity; nor to any voluntary annuity granted without regard to pecuniary consideration; nor to any annuity or rent-charge granted by any body corporate, or under any authority of trust created by act of Parliament; nor to any annuity where the sum to be paid does not exceed ten pounds annually, unless there be more than one such last-mentioned annuity from the same grantor or grantors to or in trust for the same person or persons."

case, if the assurances shall not be destroyed by such accident, then, as soon after as such impediment shall be removed, send or deliver to the person or persons requiring the same, a copy of every deed, bond, instrument, or other assurance, whereby such annuity or rent-charge was granted, or of such of the assurances as in such notice shall be required; and such last-mentioned person or persons shall, at the time of receiving the same, pay to the person or persons furnishing the same, a sum after the rate of sixpence for every one hundred words contained in every such copy, and also the reasonable costs of sending or delivering the same; and the person or persons holding the original instruments by which such annuity or rent-charge shall be secured, shall suffer the person or persons to whom such copies shall be delivered or sent to examine the same with the originals; and in case such copies shall not be sent or delivered, or the person or persons holding the original instruments shall refuse to suffer such copies to be examined therewith according to the direction in this act, it shall be lawful for the person or persons by whom the annuity or rent-charge is payable, to take out a summons from any of his Majesty's Justices of his Courts of King's Bench and Common Pleas, requiring the person or persons neglecting to send or deliver such copies, or refusing to suffer the same to be examined with the original instrument as aforesaid, to appear before such Judge and shew cause in the premises; and it shall and may be lawful for the Judge before whom such person or persons shall be summoned, to make such order for the production of the instruments by which such annuity or rent-charge shall be secured, and for suffering the complainant to take copies thereof, and examine the same, or the copies delivered, with the original instruments, and otherwise in the premises, as to such Judge shall seem meet."

Charges for copies.

In case of default, to summon party refusing to deliver copies thereof before Judge.

Sect. 6. "That if *any part* of the *consideration for the purchase of any such annuity or rent-charge shall be* returned *to the person advancing the same, or in case such consideration or any part of it shall be paid in notes, if any of the* notes, *with the privity and consent of the person advancing the same, shall* not be paid *when due, or shall be* cancelled *or* destroyed *without being first paid, or if such consideration is expressed to be paid in money, but the same or any part of it shall be paid in* goods; *or if the consideration, or any part of it shall be* retained, *on pretence of answering the future payments of the annuity or rent-charge, or any other pretence;* in all and every the aforesaid cases, it shall be lawful for the person by whom the annuity or rent-charge is made payable, or whose pro-

If any part of consideration money be returned, &c., proceedings against the grantor of an annuity may be stayed.

ANNUITY ACT. *Stat.* 53 *Geo.* 3.

perty is liable to be charged or affected thereby, to apply to the Court in which any action shall be brought for payment of the annuity or rent-charge, or judgment entered, by motion, to stay proceedings on the action or judgment; and if it shall appear to the Court that such practices as aforesaid, or any of them, have been used, it shall and may be lawful for the Court to order every deed, bond, instrument, or other assurance, whereby the annuity or rent-charge is secured, to be cancelled, and the judgment, if any has been entered, to be vacated."

A book to be kept by the clerks of inrolments.

Sect. 7 directs that a book shall be kept by the clerks of the inrolments in Chancery; and that there shall be paid for every entry twenty shillings only, and the fee of one shilling for every certificate and copy given, and the fee of one shilling for every search in the office, and no more.

Contracts for the purchase of annuities with persons under age to be void.

Sect. 8. "That all contracts for the purchase of any annuity or rent-charge with any person, being under the age of twenty-one years, shall be and remain utterly void, any attempt to confirm the same after such person shall have attained the age of twenty-one years notwithstanding: and that if any person shall, either in person, by letter, agent, or otherwise howsoever, procure, engage, solicit, or ask any person, being under the age of twenty-one years, to grant, or attempt to grant, any annuity or rent-charge, or to execute any deed, bond, or other instrument for securing the same, or shall advance, or procure or treat for any money to be advanced to any person under the age of twenty-one years, upon consideration of any annuity or rent-charge to be secured or granted by such infant, after he or she shall have attained his or her age of twenty-one years, or shall induce, solicit, or procure any infant, upon any treaty or transaction for money advanced or to be advanced, to make oath, or to give his or her word of honour or solemn promise, that he or she will not plead infancy, or make any other defence against the demand of any such annuity or rent-charge, or the repayment of the money advanced to him or her when under age, or that when he or she comes of age, he or she will confirm or ratify, or in any way substantiate such annuity or rent-charge, every such person shall be guilty of a misdemeanor, and, being thereof lawfully convicted in any court of assize, oyer and terminer, or general gaol delivery, shall and may be punished for the said offence by fine, imprisonment, or other corporal punishment, as the Court shall think fit to award."

Not more than 10*s.* per cent. to be taken for

Sect. 9. "Persons demanding or receiving any gratuity or reward for the soliciting or procuring the loan and brokerage above

ANNUITY ACT. *Stat.* 53 *Geo.* 3.

ten shillings for every one hundred pounds actually and *bonâ fide* advanced, shall be deemed guilty of a misdemeanor."

procuration-money.

Act not to extend to Scotland or Ireland, nor to annuities granted by will, settlement, &c., nor where secured upon freehold lands, &c.

Sect. 10. "That this act shall not extend to *Scotland* or *Ireland*, nor to any annuity or rent-charge given by *will* or by *marriage settlement* or for the *advancement of a child*, nor to any annuity or rent-charge *secured upon freehold, or copyhold, or customary lands* in Great Britain or Ireland, or in any of his Majesty's possessions beyond the seas, *of equal or greater annual value than the said annuity, over and above any other annuity, and the interest of any principal sum charged or secured thereon, of which the grantee had notice at the time of the grant*, whereof the grantor is seised *in fee-simple or fee-tail in possession*, or *the fee-simple whereof in possession the grantor is enabled to charge* at the time of the grant, or secured by the *actual transfer of stock* in any of the public funds, the *dividends* whereof are of *equal or greater annual value* than the said annuity; nor to any *voluntary annuity or rent-charge granted without regard to pecuniary consideration or money's worth;* nor to any annuity or rent-charge granted by any body corporate, or under any authority or trust created by act of Parliament.[J.]

It will be useful to consider the several clauses of the statute *seriatim*.

Sect. 2.—Directing the inrolment of a memorial within thirty days after execution.

Thirty days to be exclusive of the day of execution.

[J.The period of thirty days must, like the twenty days under the repealed act (*Ex parte Fallon*, 5 T. R. 283), be computed exclusively of the day of executing the assurance. "Suppose," said Lord *Kenyon* in that case, "the direction of the act had been to inrol the memorial within *one day* after the granting of the annuity, could it be pretended that that meant the same as if it were said, that it should be done on the same day on which the act was done? If not, neither can it be construed inclusively, where a greater number of days is allowed."J.]

Securities need not have been executed by *all* parties before inrolment.

[J.To satisfy the word "execution" in this section, it is not necessary that the deed should have been executed by *all* parties previously to inrolment; and, therefore, it has been held to be no objection to a memorial, that it was inrolled before the execution of the deed *by the* GRANTOR. *Buckeridge* v. *Flight*, 6 B. & Cr. 49; 9 Dowl. & R. 113; affirming judgment in *C. P.*, *Flight* v. *Buckeridge*, 11 J. B. Moore, 28; 3 Bing. 323. But if a party executes after the deed is memorialized, he should execute in the presence of

ANNUITY ACT. *Stat.* 53 *Geo.* 3.

the same witness or witnesses as attested the execution by another party, (*i. e.* of the witness or witnesses whose name or names already appear on the memorial), or without *any* attesting witnesses; for though the act requires the names of all the attesting witnesses to be stated, it does not require that there should be such witnesses. *Flight* v. *Buckeridge*, 11 J. B. Moore, 28; 3 Bing. 215. It is requisite to adopt one of these modes, where the deed is to be executed by a person at such a distance from England as to preclude the possibility of its being returned for inrolment within the thirty days.[J.]

Execution when one of the parties is abroad.

CONTENTS OF MEMORIAL.

CONTENTS OF THE MEMORIAL.

Date of instrument.

1. *Date of Instrument.*]—[J.This has been decided to mean the date which the instrument bears, and not the day on which it is executed by all the parties. *Buckeridge* v. *Flight*, 6 B. & C. 49; 9 Dowl. & Ry. 113; and see 11 J. B. Moore, 28; 3 Bing. 323. It should seem, however, that the correct course is for the deed to be dated on the day on which it is executed by the party *first* executing; as the inrolment should take place within thirty days from such execution.[J.]]

Nature of instrument.

2. *Nature of Instrument.*]—[J.A technical inaccuracy in the description of the instrument, or a partial statement only of its operation, will not, it seems, invalidate the memorial. Thus, an *underlease* for a long term of years, leaving a reversion of ten days in the grantor, has been held to be sufficiently described as an *assignment*. *Capel* v. *Butler*, 2 B. & C. 251; 3 Dowl. & Ry. 485. And the term "grant of annuity," has been decided to be an adequate designation of an instrument, which contained, in addition to the grant, a release of a former annuity; *Crowther* v. *Wentworth*, 6 B. & C. 366; and likewise, of an instrument which operated also as an assignment of stock in the public funds. *Browne* v. *Lee*, 6 B. & C. 688. So, "an assignment of dividends and annuity deed to secure the same," has been held sufficiently to denote the nature of the instrument by which an annuity was granted, and a moiety of the dividends in a sum of £3 per cent. Consols was assigned for the purpose of securing it. *Cave* v. *Lovelace*, 2 B. & Ad. 767. In the case of *Aston* v. *Gwinnell*, 3 You. & J. 136, a memorandum of an annuity was objected to, inasmuch as it did not shew that the deed contained, in addition to the grant of the annuity, a charge of other annuities in the same property; but the objection was held untenable.[J.]]

ANNUITY ACT.

Stat. 53 *Geo.* 3.

Names of witnesses.

3. *Names of witnesses.*]—[J. It is not necessary to state in the memorial the respective parties whose execution the witnesses attest; *Buckeridge* v. *Flight*, 6 B. & C. 49; 9 Dowl. & Ry. 113; and see *Orton* v. *Knight*, 3 Bos. & P. 153; nor, of course, is it requisite that persons who saw the execution, but did not attest it, should be mentioned. The objection was taken in a case that has been communicated to the editor, but was soon abandoned.J.] [The memorial is bad if it states as witnesses, besides the true witnesses, the names of persons who did not witness the deed. *Gibbs* v. *Hooper*, 9 Sim. 89. But a statement in the memorial, that the securities were deeds of lease and release, executed and attested by certain persons, naming the parties and witnesses to the deed of release, was held good, although one of the parties to the deed of release did not execute the lease, and two of the witnesses to the release did not attest the lease. The lease and release made but one security. *Whalley* v. *Youde*, at the Rolls, April, 1837, MS. See *Browne* v. *Rose*, 6 Taunt. 124: *Hart* v. *Lovelace*, 6 T. R. 471.]

[J. Under this head of the memorial several points arose in regard to the requisite designation of the witnesses. The act left it doubtful whether the place of residence, &c. of the witnesses, was required to be stated in the memorial in addition to their names. The body of the act (sect. 2), and the head of the column in the form of the memorial, referred merely to the *names* of the witnesses; but the expression "E. F., *of*," in the part of the column appropriated for the witnesses' names, seemed to indicate that the description should be given, and, accordingly, it was decided that the describing a witness as "clerk to A. B." was not sufficient. *Darwin* v. *Lincoln*, 5 B. & A. 444: *Smith* v. *Pritchard*, 1 Dowl. & Ry. 374. But see *St. John* v. *Champneys*, 7 J. B. Moore, 382.J.]

Stat. 3 *Geo.* 4.

Reciting doubts upon stat. 53 Geo. 3, as to whether the places of abode of witnesses should be inserted in the memorial.

[J. This led to the passing of the act of 3 Geo. 4, c. 92, which, after reciting the former act, and the form of the memorial therein contained, proceeds as follows: "And whereas the words of enactment referring to such form express only that a memorial of the names of all the witnesses to every such deed, bond, instrument, or other assurance as therein mentioned, should be inrolled as directed by the said act, without providing that any description of the witnesses should be given in such memorial, except as such form is thereby referred to; and such form does not provide that any description should be added to such names except by the addition of the word "of" to the letters "E. F." and "G. H." as aforesaid, as applicable to indentures of lease and release: And whereas, in consequence of such indistinct enactment, it may be doubtful

ANNUITY ACT. *Stat.* 3 *Geo.* 4.

Description of witnesses.

whether it was the intention of the Legislature to require any, or, if any, what description to be added to the names of witnesses in the memorial of any deed, instrument, or assurance to be inrolled as aforesaid: *And whereas* a very great number of memorials of grants of annuities have, since the passing of the said act, been inrolled, in which the names of the witnesses to the deeds, instruments, or assurances, specified in such memorials, have been inserted without the addition of the place of abode of such witnesses; and it has been inferred, from the use of the word "of," after such letters "E. F.," and after such letters "G. H." as aforesaid, that it was necessary to describe each of such witnesses in such memorial as of some place, and in consequence thereof some grants of annuities, made since the passing of the said act, have been, in proceedings in summary applications to courts of justice, which cannot be reviewed in any superior court, deemed null and void, on the ground that no description of the place of abode of the witnesses to some or one of the deeds, instruments, or assurances, by which such grants of annuities have been made, had been inserted in the memorials or memorial thereof inrolled as directed by the said act: *And whereas* doubts have been entertained whether the construction so put on the said act is the true construction thereof, more especially as the same is so far penal as it renders deeds, instruments, and assurances, of which memorials have not been inrolled in pursuance of the said act, null and void, and the provisions in the said act are not so clear and explicit as the same ought to have been under such circumstances, and the parties claiming under grants of annuities may have been thereby misled, and induced to conceive that it was not necessary under the provisions of the said act to insert in the memorial of any deed, instrument, or assurance to be inrolled as aforesaid, the place or places of abode of the witness or witnesses to such deed, instrument, or assurance, or any more than the name or names of such witness or witnesses, there being no words in the said act expressly requiring any more to be so inserted, nor any words from which it could be inferred that any more was required to be so inserted, except the word "of" after the letters "E. F." and "G. H." respectively, with reference to one species of assurance inserted in the form of memorial before mentioned; and it is expedient to remove all doubts touching the construction of the said act, with respect to so much of the memorials required by the said act to be inrolled as relates to any description of the witness or witnesses to any deed, instrument, or assurance: *Be it enacted*, &c., That by the said act of the fifty-third year of the reign of his said

Declares no further description necessary

late Majesty, no further or other description of the subscribing witness or witnesses to any deed, bond, instrument, or other assurance, whereby any annuity or rent-charge is or may be granted, is required in the memorial thereof, besides the names of all such witnesses; and so the said act shall be deemed, construed, and taken."

than the names of such witnesses.

Sect. 2. "And whereas doubts have also arisen, whether, under the said act of the fifty-third year of the reign of his said late Majesty, the omission to inrol a memorial of any one of the assurances for securing any annuity or rent-charge does not vitiate the whole transaction, notwithstanding the inrolment of a memorial of another deed, bond, instrument, or other assurance granting the same; and it is also expedient to remove such doubts: Be it therefore further enacted and declared, That every deed, bond, instrument, or other assurance granting any annuity or rent-charge, and of which a memorial shall have been or shall be duly inrolled pursuant to the said act, notwithstanding the omission to inrol any other deed, bond, instrument, or assurance for securing such annuity or rent-charge, shall be valid and effectual, according to the intent, meaning, and true effect thereof, notwithstanding a memorial of any other deed, bond, instrument, or assurance for securing the same annuity, shall not have been duly inrolled pursuant to the said act."

Deed granting annuity, a memorial of which has been inrolled, shall be valid, notwithstanding the omission to inrol any other deed for securing such annuity.

Sect. 3. "Provided, That nothing herein contained shall extend to give any other force or validity to any deed, bond, instrument, or other assurance of which a memorial shall have been duly inrolled as aforesaid, than such deed, bond, instrument, or other assurance would have had if any deed, bond, instrument, or other assurance for securing the same annuity of which a memorial shall not have been duly inrolled, had never been executed."

Act not to give other validity to any deed duly inrolled than it would have had if no other deed had been executed.

Sect. 4. This act not to extend to give effect to any deed, &c. declared void by any judgment, &c. at law or in equity, or by any acts or deeds of the parties thereto, or by any other legal or equitable means whatsoever; nor to prejudice any proceeding commenced on or before the 31st day of May, 1822, upon the ground of a defect in the memorial.[J.]

Act not to give effect to any deed declared void, &c.

[J. Another point raised on the construction of the act in regard to the witnesses was, whether it was necessary to set forth in the memorial their christian names at length, or was sufficient to give the initials of such names, according to the attestation to the deed: and it was held that the names should be stated at length. *Cheek* v. *Jefferies*, 2 B. & Cr. 1; 3 Dowl. & Ry. 185: *Metcalf* v. *Bowes*,

Whether necessary to set forth the christian names of witnesses at length.

ANNUITY ACT. *Stat.* 3 *Geo.* 4.

5 B. & Cr. 258: *S. C. nom. Metcalfe* v. *Earl Strathmore*, 7 Dowl. & Ry. 773: *Doe* d. *Fox* v. *Bromley*, 6 Ed. 292.[J.]]

Description of witnesses.

[[J.] As this decision would have been fatal to many grants of annuity, (an impression having commonly prevailed that it was sufficient to make the memorial agree with the attestation of the deed), the act of 7 Geo. 4, c. 75, was passed, which, after reciting the second section of the 53 Geo. 3, c. 14, proceeded as follows: "And whereas it frequently happens that the names of witnesses to grants of annuities or other assurances are unknown to the grantees thereof, or their solicitors or agents, otherwise than as they appear by the subscriptions of such witnesses to the attestations of the execution of such grants or assurances, and it might greatly endanger the validity of any such assurance, if any name were inserted in the memorial thereof as the name of any such witness, in any other manner than as the same appears signed by such witness as attesting the execution of such assurance: And whereas a very great number of memorials of grants of annuities have, since the passing of the said act, been inrolled, in which the surnames of witnesses to the deeds, instruments, or assurances specified in such memorials, have been inserted, together with such initial letter or abbreviation of the christian names of such witnesses as appeared subscribed to the attestation by such witnesses of the execution of such deeds, instruments, or assurances, without stating at full length the christian names of such witnesses: And whereas doubts have been entertained, whether, according to the true construction of the said act, it is necessary to the validity of any such grant or other assurance, that the christian as well as surnames of all the witnesses to such deed, grant, or other assurance, should be inserted in the memorial thereof in any other manner than as the same may appear subscribed to the attestation of such deed, grant, or other assurance by such witnesses respectively; and in order to remove such doubts,

Stat. 7 Geo. 4, c. 75. Reciting doubts upon stat. 53 Geo. 3, c. 14.

Declares no further or other names of witnesses required in memorial than appear in deed.

Be it enacted, &c. That by the said act of the fifty-third year of the reign of his said late Majesty, no further or other name or names of the subscribing witness or witnesses to any deed, bond, instrument, or other assurance, whereby any annuity or rent-charge is or may be granted, is or are required in the memorial thereof, besides the names of all such witnesses *as they shall appear signed to their attestations respectively of the execution of such deed, bond, instrument, or other assurance:* and so the said act shall be deemed, construed and taken."[J.]] [This statute amounts to a declaration, that the decisions on the statute 17 Geo. 3, c. 26, as well as on the later act, were erroneous. *Phillips* v. *Const*, 3 Russ. 267.]

ANNUITY ACT.
Stat. 53 *Geo.* 3.

Contents of memorial.

[J. A similar objection seems to have applied under the old act; but in *Const* v. *Phillips*, 4 Dowl. & Ry. 344, the Court, in the exercise of its discretion, refused to set aside a warrant of attorney to secure an annuity, on the ground of the christian names of the witnesses not being set out at length, the annuity having been paid for eighteen years; and there appearing to have been an erasure in the memorial.J.]

As to the *cestuis que vie.*

4. *Person or persons for whose life or lives the annuity or rentcharge is granted.*]—[J. It is not necessary, though usual, to describe the *cestuis que vie* otherwise than by their names, or to state whether the annuity is granted for their joint or respective lives, or whether for lives absolutely or for years determinable with lives. *Barber* v. *Gamson*, 4 B. & Al. 281.J.]

[An omission of one of the christian names of one of the *cestuis que vie* in the annuity deed, and in the memorial, was held immaterial. *Hulton* v. *Sandys*, Younge, 602.]

Consideration.

3. *Consideration and how paid*].—[J. It was objected in a recent case to the validity of an annuity, that, in the deed of grant, the consideration was stated to be paid in notes and sovereigns, and in the memorial in notes only, the truth being as stated in the memorial: the objection was overruled. *Faircloth* v. *Gurney*, 2 Moo. & Sc. 822.J.] [Where the memorial described part of the consideration as having been paid in Bank of England notes, the fact being that it was paid in notes of a provincial bank, it was held bad, the act being imperative: and it was held that the facts might be brought before the Court by affidavit. *Lewis* v. *Hooper*, 4 Nev. & N. 318: *Ex parte Lewis*, 2 Ad. & El. 135, *S. C.* (See *Ex parte Fairman, re Lloyd*, 3 Dea. 467). It was held also, that the objection might be taken after the lapse of six years. Ib.] [J. In the case of *Faircloth* v. *Gurney*, the Court distinctly held that it was not necessary to state in the memorial any consideration from the grantee other than a pecuniary one; and therefore that a covenant by the grantee to keep on foot a policy of life assurance, the premium on which was included in the annuity, need not be noticed.J.]

[J. Where it had been agreed that part of the consideration money should be applied in the redemption of a pre-existing annuity, and accordingly the grantor, on receiving such sum from the grantee, handed it over to the former annuitant, it was held that it was not necessary to state this transaction in a memorial; for, as be-

ANNUITY ACT. *Stat.* 53 *Geo.* 3.

Statement of consideration.

tween the parties, the consideration was simply the payment of so much money, and the grantee had nothing to do with its application when paid. *Lane* v. *Lovelace,* 2 B. & Ad. 767.] A singular objection in regard to the statement of the consideration money was made in the case of *Morris* v. *Jones,* 2 B. & C. 232, namely, that the sum paid by the grantee was a consideration as well for the annuity as for certain policies of life-insurance, which were at the same time assigned to the grantee for better securing the annuity (*a*). The circumstances were as follow:—On 1st of May, 1818, Jones, the defendant, in consideration of £11,000 paid by Morris, the plaintiff, granted to Morris an annuity of £1429 for sixty years, if he (the grantor) should so long live, and farther secured it by a warrant of attorney; and by *another indenture of assignment of even date and for the same consideration,* assigned to Morris three policies of assurance to the amount of £11,000 on Jones's life, long previously effected, at the annual premium of £659, and then of the value to sell or surrender of £1135. The annual premium on a new policy for a like sum at Jones's then age, would have been £744. Of this assignment no memorial was inrolled. The grantee admitted that it was the agreement of the parties that he was to receive the annual sum of 7*l.* per cent. on the consideration that he was to accept an assignment of the above-mentioned policies, and to have the premiums secured to him as a component part of the annuity; and was to keep on foot those policies, and, in case of redemption of the annuity, was to re-assign to the grantor the identical policies. The Court of King's Bench decided that the assignment was valid though not memorialized, being a security for the purchase-money, and not for the annuity; and that the statement in the memorial of £11,000 as the consideration was accurate, notwithstanding the objection that that sum was paid as well for the annuity as also for something else, namely, some interest or benefit from the policies; for the annuitant would not have purchased the policies as a separate transaction, and they were in truth assigned to ease the grantor from the indirect payment of the larger premium.[J.]]

[[J.] Perhaps there was some ground in this case to contend that the transaction was usurious, on account of the principle or con-

As to insurance.

(*a*) [[J.] The usual course is, to include the premium of insurance in the annuity, and then the grantee insures in his own name and at his own expense, the grantor covenanting merely not to do any act by which the policy may become forfeited, or an additional premium become payable; or, in the latter case, to pay such *additional* premium.[J.]]

ANNUITY ACT. *Stat.* 53 *Geo.* 3.

Statement of consideration.

sideration money being secured to the annuity creditor by the transfer of the policy of insurance; for it seems to be essential in an annuity transaction, as distinguished from a loan, that the principal should be sunk between the parties. Thus, suppose A., in consideration of £100 received from B., agreed to pay to the latter the annual sum of £7 during A.'s life, and a proportional part up to the period of A.'s decease, and secured the repayment of the £100 on his (A.'s) decease, by an insurance on his life, he covenanting to pay the premiums on such policy, would not such a transaction be usurious, though the principal was not recoverable by the grantee during A.'s life? and can the case be less open to the objection because the premiums were secured indirectly as a component part of the annuity? It is true, that in this case the annuity was granted not for the life of the grantor absolutely, but for sixty years determinable with such life, and therefore there was a possibility of the annuity determining before the insurance money became payable. Perhaps this was considered as taking the case out of the principle in question, as no objection was made on the ground of usury. It will moreover be observed, that though a fund was provided by means of the policy for the repayment of the consideration money at the grantor's decease, yet *the grantor was under no obligation to pay it.*[J.]

Insurance:— Usury.

[J. An objection of this nature was discussed in the case *In re Nash*, 4 Moo. & P. 793, where, in consideration of £1000, A. & B. granted to C. an annuity of £120 for four lives, and covenanted, within thirty days, after the decease of three of them, to insure the life of the survivor for £1000, and assign the policy to the annuitant. It was contended that this transaction was usurious, the principal not being put in hazard, as the stipulated assurance secured to the grantors the return of their £1000; but the Court was of opinion that having regard to the possibility of the last two lives dropping together, and also of the policy being vacated by suicide, &c., it could not be said that the principal was not put in hazard; consequently that the objection was untenable.J.] [See *Holland* v. *Pelham*, 1 Cr. & J. 575: *Ferguson* v. *Sprang*, 3 Nev. & M. 665.]

Statement of consideration —cancellation of prior deeds.

[Where, on the 4th January, 1837, an annuity was granted in consideration of £5000, consisting of a sum paid on each as a release of a debt secured by warrant of attorney, and a sum of £100 was repaid to the grantee for the purpose of paying the premium on a policy of insurance; and it being apprehended that the return of that sum had avoided the transaction, it was determined to cancel the deeds, to return the £100, and execute fresh deeds; which was

ANNUITY ACT. *Stat.* 53 *Geo.* 3.

Statement of consideration.

done on the 3rd February, 1827, the consideration stated in the deeds being the same as before; it was objected that the consideration stated should have been the £100 paid and the cancelling of the preceding deeds. But Lord *Langdale*, M. R., held, that the consideration was truly stated, for the parties acted under the impression that the former grant was a nullity, the delivering up of which would have constituted no consideration at all. In *Buckeridge* v. *Flight*, 9 Dowl. & Ry. 113 ; 6 B. & Cr. 49, there was a recognized and subsisting annuity. *Whalley* v. *Youde*, at the Rolls, April, 1837, MS.]

Nominal consideration.

[It is unnecessary to state in the memorial a nominal consideration of ten shillings, mentioned in the deed to have been paid to a trustee or surety. *Ince* v. *Everard*, 6 T. R. 545: *Few* v. *Backhouse*, 1 Per. & D. 34; 8 Ad. & El. 789.]

When the consideration is paid by a draft or cheque on a banker, the time when it is payable should be stated.

Where part of the consideration of an annuity consisted of a draft payable at a banker's, it was held, that it was necessary to state in the memorial at what time such draft was payable; and though the application for setting aside the securities was made twelve years after the execution of the deed, and after the deaths of the attesting witnesses, the Court set them aside, imposing on the grantors the terms of returning the principal and interest. *Drake* v. *Rogers*, 4 J. B. Moore, 402. So, if the consideration for granting an annuity be paid by a banker's cheque, payable immediately, it is necessary to state in the memorial the time when it becomes payable. *Poole* v. *Cabanes*, 8 T. R. 329 : *Berry* v. *Bentley*, 6 T. R. 690.

Not necessary to state other particulars than those referred to in the schedule.

[This concludes the decisions on the several columns of the schedule. And here, it should be observed, that a clerical inaccuracy, which cannot lead to misconception, being explained by the context, will not vitiate the memorial: thus, when the head of the sixth column was written thus, "Person for whose the annuity is granted." The omission of the word "life" was held on this ground not to be a fatal defect. *Flight* v. *Lake*, 2 Scott, 126. It is not necessary to state in the memorial any particular for which no column or space is appropriated in the form given in the act. Thus, it has been decided not to be necessary to describe in the memorial that the annuity is redeemable; *Yems* v. *Smith*, 3 Barn. & Al. 206; nor to state a covenant by the grantor not to go beyond the seas without giving notice to the grantee, in order to enable him to preserve a life policy by paying additional premiums, which premiums the grantor covenanted to repay; *Wood* v. *Perrott*, 5 J. B. Moore, 63; nor a power enabling the grantee in any such event to retain the extraordinary expenses thereby incurred, out of the fund

ANNUITY ACT.
Stat. 53 *Geo.* 3.
Memorial.

assigned to him for securing the annuity. *Cane* v. *Lovelace*, 2 B. & Ad. 767. Nor is it any objection to the memorial of the warrant of attorney, that it does not state the name of the party at whose suit, or the penal sum for which, the judgment was confessed. *Yems* v. *Smith*, 3 Barn. & Ald. 206: *Barber* v. *Gamson*, 1 B. & Al. 281 (*a*).] [Or that judgment is entered up; *Richardson* v. *Tomkins*, 5 M. & Sc. 56: or that the annuity is payable for the time between the last quarter day and the death of the grantee. *Ince* v. *Everard*, 6 T. R. 545. And a clerical inaccuracy that causes no material ambiguity will not avoid the annuity. Ibid. But when the memorial first set forth the whole contents of the deed, from which it appeared that the consideration for the annuity was £455, and then contained a substantive averment that the true and *bonâ fide* consideration was £450, and that the said sum of £450 was paid by the grantee, &c., it was held to vitiate the whole transaction. *Gibbs* v. *Hooper*, 9 Sim. 89. See *Nash* v. *Godmond*, 1 B. & Ad. 624.]

Directions as to the memorial, under the Annuity Act.

By the 53 Geo. 3, c. 141, s. 2, *ante*, p. 80, a memorial should be inrolled in the Court of Chancery within thirty days after the execution of the securities. The memorial must have a *one pound* stamp, 55 Geo. 3, c. 184. It is usually written on a piece of parchment, a little wider than a common copy of Court roll, with ruled ink lines, according to the form in the act. It is not necessary or usual either for any of the parties to sign the memorial, or for it, or any of the securities, to be acknowledged. The memorial should be left, within the thirty days, at the *Inrolment Office*, by the Six Clerks' Office, *Chancery Lane*. If the grantee wishes to have a certificate indorsed on the securities of their having been memorialized, they should also at the same time be left there; and a few days afterwards the securities may be obtained, with the following certificate indorsed, if the memorial were left in due time: "A memorial of this deed was inrolled in his Majesty's High Court of Chancery, pursuant to an act of Parliament made for that purpose." But if the memorial be not left there until after the thirty days, the words "pursuant to an act of Parliament made for that purpose" are omitted. This variation in the form of the certificate is therefore important. A record in the office states the day and hour when

Certificate of inrolment.

(*a*) Under the old act, it was decided to be unnecessary to state a clause that execution should not be taken out upon the warrant of attorney until forty days after the day limited for payment. *Doe* d. *Mason* v. *Phillips*, 5 Mau. & S. 369. It was held, however, (for it is presumed, though not stated, that the case arose on the stat. 17 Geo. 3), that to memorialize a power to redeem upon six months' notice *terminating on one of the days of payment*, as a power to redeem at *any* time, was bad. *Tringham* v. *Bethune*, 7 Taunt. 429.

ANNUITY ACT. *Stat.* 53 *Geo.* 3. *Consideration.*

the memorial is left; and it is to be regretted that there is not, agreeably to the provisions of the act, *ante*, p. 84, sect. 7, a similar statement in the indorsed certificate, as in the case of deeds memorialized either in the York or Middlesex registry. For if the grantee should afterwards sell the annuity, it would be requisite for the purchaser to ascertain by means of a search, whether the securities were memorialized within the thirty days. If the certificate stated that, the trouble and expense of a search would be saved.

A *bonâ fide* debt, or sum advanced for grantor's use, a good consideration for an annuity.

A debt *antecedently* contracted is a good consideration *in money*, within the annuity act, because it is not necessary, nor was it ever intended, that the money should be actually told down at the time of the grant. If it be a *bonâ fide* transaction, and the money be really paid to the grantor, or to his use, it satisfies the words and meaning of the act. *Ex parte Fallon*, 5 T. R. 286: *Symmons* v. *Mortimer*, Id. 139 (*a*). So, money lent and paid at different times for the education and advancement of the grantor, is a good consideration for the grant of an annuity within the 17 Geo. 3, c. 26, s. 3, and such a consideration is sufficiently expressed in the deeds for securing the annuity under the description of "money lent and advanced, and also paid, laid out, and expended to and for the maintenance, education, and advancement in the world of the grantor." *Kelfe* v. *Ambrosse*, 7 T. R. 551.

SECT. 4.—REQUIRING THE NAMES OF PARTIES BENEFICIALLY INTERESTED TO BE STATED.

Names of parties beneficially interested to be stated.

[J. In the case of *Dartnell* v. *Marquis Wellesley*, 7 J. B. Moore, 63, an attempt was made to set aside an annuity on an affidavit by the grantor's trustees, that it appeared by the books of third persons, that the consideration money was advanced by them and not by the plaintiff, but the Court refused the application, there being no affidavit by the grantor himself, and the annuity having been paid for ten years.J.]

SECT. 6.—AUTHORIZING THE COURT TO VACATE THE SECURITIES, IF ANY PART OF THE CONSIDERATION MONEY IS RETURNED OR RETAINED, &c.

Retainer of part of consideration.

[J. In the case of *Barber* v. *Gamson*, 4 B. & Al. 281, the Court of King's Bench decided, that the words "*or any other pretence*" in this section, relate only to *improper* pretences. In that case, it appeared, that, on the grantor's proposal, part of the consideration

(*a*) [These cases arose under the repealed stat. 17 Geo. 3, but the principle of them seems to be applicable to the act of 53 Geo. 3, now in force.]

money was impounded in the hands of the grantee's attorney, to be applied under the direction of the grantor's surveyor in performing covenants to build on the property charged with the annuity, which deposit (except a small part applied in paying the expenses of the securities) was applied in three months accordingly. Upon these facts, the Court refused to set aside the annuity, but discharged the rule, upon the terms, that, during the period of the money being impounded, a proportionate part of the annuity should be rebated or allowed to the grantor.[J.]

Vacating securities.

[J. In this and several other cases the Courts have conceived themselves to be invested by the Legislature with a discretion, either to vacate the securities or not, and to impose terms upon the parties. The same discretion was exercised under a similar clause in the repealed act of the 17 Geo. 3. Thus, in the case of *Cooke* v. *Tower*, 1 Taunt. 372, the Court discharged a rule which had been granted for setting aside an annuity on account of part of the consideration money being retained by the payment to the grantee's solicitor of a sum of money for negociating it, the grantee offering to reduce the annuity from £1050 to £700. *Girdlestone* v. *Allan*, 1 B. & Cr. 61; 2 Dowl. & Ry. 150. And this discretion has, to a certain extent, even been exercised in cases falling within the first and third sections of the old act, though these clauses simply declare the deed void for a defective memorial, &c., and do not expressly authorize the Courts, (as in the case of the fourth section relating to the return of the consideration money, &c.), to vacate the security. See *Const* v. *Phillips*, 4 Dowl. & Ry. 344. It is probable, however, that the Courts would consider themselves more fettered in these cases than the other, the language of the clauses being quite different. (*Vide post*).[J.]

Discretionary power vested in the Courts by the Legislature.

[J. In regard to the provisions of the sixth section of the act under consideration, it will be seen, that where part of the consideration money is retained, or deposited with a third person, to answer the future payments of the annuity, the grant is liable to be vacated upon the clear and express terms of the act. In *Mence* v. *Hammond*, 6 J. B. Moore, 391, an annuity was set aside on this ground. Few cases, however, of this simple unquestionable nature arise. The Court has generally to draw its conclusion from more complicated circumstances.[J.]

Retainer to answer future payments invalidates annuities.

[J. The deduction or retainer by the grantee's agent of sums of money on account of debts antecedently due to himself, professional charges, &c., has in several recent cases been made a ground for setting aside annuities under the present section, and no branch of the requisitions of the statute requires more vigilant attention on

Deduction of professional charges, &c., by grantee's agent.

ANNUITY ACT. *Stat.* 53 *Geo.* 3.

Retainer of part of consideration.

the part of those by whom transactions of this nature are conducted. The following statement will serve to shew the principal circumstances by which the Courts were influenced in the several cases in question; though it must be admitted, that in cases of this kind, in which the result depends on the impression made upon the Court by a detailed representation of all the facts, a more satisfactory conclusion can be drawn from the reports themselves, than from *any* summary statement. In the case of *Coventry* v. *Champneys*, 8 J. B. Moore, 302, it appeared, that, previously to 1818, H. and G. being employed by the defendant to raise money for him by way of annuity, to pay off certain former annuities, and for his other occasions, engaged to raise him any sum at the rate of £12 per centum, provided the defendant would pay them (H. and G.) a commission of £9 per centum for their procuration of the money, and the expenses of preparing the deeds; that the Star Life Assurance Company became the grantees of one annuity; one F. St. J. of another; the plaintiff of a third; that H. and G. acted as the plaintiff's agents; that the consideration money was received by them; and that they deducted thereout their commission at the rate of £9 per centum, and placed the remainder to the credit of the defendant on account. The plaintiff C. swore that he actually advanced £1200 to H. and G. as part of the consideration money for the annuity; and that he never knew of any commission being deducted or retained by H. and G. The executor of another grantee also deposed to his testator's not being privy to the deduction; and he produced an account from the testator's books, shewing that H. and G. debited the testator with his full share of the consideration money, for which the annuity in question was granted. One of the attesting witnesses deposed that, in 1818, he was employed as the defendant's agent, to raise money by way of annuity, and that he applied to H. and G. as such; that he and M., who were both present at the execution of the annuity deeds, saw the sum of £6200 duly paid by G. to the defendant, and that no part of it was, with his or their privity, or to his or their knowledge, returned or repaid by the defendant to G. at the time of the execution of the indenture; after which the deponent and M. left the room. G. deposed, that in June, 1818, the defendant, through B. his agent, applied to him and his partner H. to raise money for the defendant by way of annuity: that £6200 was advanced by the plaintiffs C. and G. and others; and the sum so paid to the defendant by the hands of the deponent G., for the purchase of the annuity in question was really and *bonâ fide* paid by him, G., into the proper hands of the defendant, in Bank of England notes, of the numbers

and dates indorsed on the indenture containing the grant of annuity; and that previously to this payment, H. and G., as the agents of the defendant, had advanced him considerable sums of money; that after the payment in question, a statement of accounts was made by the defendant and G., and that, upon such statement the former was found to be justly indebted to H. and G. for money lent to and paid for the defendant by them as his agents, in the sum of 5427*l.* 1*s.* 4*d.*, which sum the defendant thereupon paid to G.; but that no part of the above sum of £6200 was deducted or retained by either H. or G. Upon these facts, the Court was clearly of opinion, that H. and G., acting as the agents of the grantees, had retained part of the consideration-money, and that, therefore, the annuities must be set aside on the terms of paying the principal, interest, &c., to be computed by the prothonotary. So, in the case of *Williamson* v. *Goold*, 8 J. B. Moore, 109, where one of the objections to the annuity was, that part of the consideration-money had been retained, it appeared by the defendant's affidavit, that, in September, 1813, being greatly harassed to discharge certain annuities which he had granted through the medium of one H., and particularly being pressed by H. for payment of £2290, as due to six persons to whom annuities amounting to the sum of £2000 had been previously granted, and being indebted to H. in £400 for money lent by H. to him in August, 1813, for securing the payment of which, with interest, he had executed to H. his warrant of attorney; he subsequently to September, 1813, contracted with H. that he should procure a further advance of £3130, for which he, the defendant, should grant an annuity at the rate of £14$\frac{1}{4}$ per cent.; and it was agreed that H. should, out of the £3130, discharge to the six persons the arrears so due on account of their several annuities, amounting to about £2290; that H. should retain the £400 due to him by the defendant, with interest; and that he should pay to H. £10 per cent. on the £3130 for his commission. That, on the 22nd of December, 1813, the defendant met, by appointment, at S., one G., who had about that time entered into partnership with H., for the purpose of the defendant's receiving the £3130, and for executing the necessary instruments. That G. having declared himself to be the agent of the plaintiff and other persons for whom the plaintiff was to become a trustee by virtue of the proposed annuity, produced to the defendant the engrossment of a proposed grant of annuity, whereby the defendant was to charge certain property with an annuity, during his life, of

ANNUITY ACT. *Stat.* 53 *Geo.* 3.

Retainer of part of consideration.

Williamson v. *Goold.*

ANNUITY ACT. *Stat.* 53 *Geo.* 3.

Retainer of part of consideration.

£590 to the plaintiff, in consideration of £4130; that upon the defendant's expressing his astonishment at the increase of the sum, G. stated, that, upon taking an account of the sums due to the six former annuitants, it appeared that they amounted to £1000 more than H. had at first calculated. That after much angry discussion, and after G. had threatened the defendant with legal proceedings on account of the sums owing by him, he executed the indenture of grant to the plaintiff and others whose names were mentioned in the schedule thereunto annexed. That, at the time of the execution of the indenture, G., as agent to the plaintiff, produced and laid out upon the table Bank of England notes to the amount of £4130, and indorsed the numbers of them upon the indenture, and G. then *retained thereout* £2290, *the arrears due of the former annuities; and also* £400 *due by the defendant to H., with interest thereon, together with a further sum of* £450, *of which G.* declared that £413 *was due to H. as agent of the plaintiff for procuration-money, and preparing the securities, at the rate of* £10 *per cent. on such* £4130, and the residue of the £450, for travelling expenses, and trouble of G. and two other persons who accompanied him to S., to witness the execution of the securities. That G. and H., after such deductions, paid to the defendant £990, or thereabouts, being the balance of the £4130, and which was the only part that ever came to the defendant's hands. That G., as the partner of H., conducted the whole transaction on the behalf of the plaintiff and the other grantees; and that neither G. nor H. were at any time the agents for the defendant. The plaintiff stated that he paid the whole consideration-money to G., and did not authorize him to retain any part of it; and the attesting witnesses deposed that they saw the money actually paid by G. to the defendant, who put it into his pocket. The payment of the several sums to G. appears to have taken place after the witnesses left the room. Ten years had elapsed since the granting of the annuity. The Court set aside the securities on the ground of the retainer of part of the consideration-money by the plaintiff's agent. With respect to the length of time, they referred to the case of *Drake* v. *Rogers*, 4 J. B. Moore, 402, where the Court set aside an annuity on account of a defect in the memorial, after a lapse of twelve years. The learned Judges appeared to think that the charge of retainer applied most strongly to the £350 retained by G. for travelling and preparing the securities, and investigating the title, observing that this was an extraordinary sum, considering that, as there were prior charges, the title must have been previously investigated, *and that no bill of costs*

As to the length of time.

ANNUITY ACT.

Stat. 53 *Geo.* 3.

Retainer of part of consideration.

Bill of costs should be delivered by solicitor of grantee.

for this sum was produced or delivered, nor any particulars stated, of which this sum was composed.[J.]]

[[J.] It is important to observe, that, in several cases the non-delivery of a bill of costs for charges made by the grantee's solicitor to the grantor for preparing securities, has been regarded by the Court as an unfavourable feature in the transaction. In *Henry* v. *Taylor,* 10 Moore, 588, *Best,* C. J., observed, that it was unnecessary to give any opinion on another part of the case, because there was an attorney's bill for £165 for negotiating a loan of £910, and no explanation given of the items of which the charge was composed. Without explanation, it must be taken to be an unfair charge.[J.]]

[[J.] The cases of *Finley* v. *Gardner, Davis* v. *Gardner, Cole* v. *Gardner,* 6 B. & Cr. 165, also belong to the class under consideration. It appeared, that, in February, 1818, the defendant G. applied to G. B. W. to raise him the sum of £3000 by way of annuity; that W. applied to one D., who was a negotiator in money transactions; and that the latter introduced W. to one T., as a person having the control over the necessary funds for making the advances required. T. stated, that he could procure the sum required for an annuity of £430 per annum; that his customary charge was £10 per cent. for law expenses, and £5 per cent. would be required for the agency of D.; but he, T., should require the payment of the first year's annuity to be made; and for this purpose, that the sum of £430 should be deposited in one of the Cambridge banks, in the name of W., who was to draw it out by quarterly instalments, and remit it to T.; W. stated these terms to G., and he assented to them. Deeds were executed by G., on the 7th of March, 1818, for securing, during his life, several annuities. Upon the execution of the deeds, T. paid to G. the full consideration-money of £3000 in bank notes, *and immediately afterwards £300 was returned to T.,* (in pursuance of the before-mentioned agreement), *for his charge of £10 per cent. for law expenses in preparing the securities; and the further sum of £150 was returned to D. for his agency charge of £5 per cent.; and at the same time, £430 was deposited with W. for the purpose of securing the first year's annuity;* who paid it into a banker's at Cambridge, and drew out the same from time to time, as it was required to pay the annuity. The affidavits of the plaintiffs in the two first cases denied all knowledge that any part of the consideration-money had been returned to T. In the other case of *Cole* v. *Gardner,* the affidavit stated, that the grantee of the annuity was dead, and that

ANNUITY ACT. *Stat.* 53 *Geo.* 3.

Retainer of part of consideration.

the party now entitled to it was a purchaser for a valuable consideration (*a*). The Court thought a part of the consideration-money had been returned within the meaning of the sixth section of the act, and made the rule absolute for setting aside the several annuities, on the defendant's paying principal and interest, together with such costs and brokerage as the Master should think reasonable, as well as the costs of the present application.[J.]]

[[J.] Again, in *Calton* v. *Porter*, 9 J. B. Moore, 703, where it appeared that, in October, 1814, the defendant applied to H. and G. to procure for him a sum of money by way of annuity; that it was shortly afterwards agreed between the defendant and G., that the former should grant to some client of H. and G. a redeemable annuity of £105 for the sum of £630; that, on the 12th of November, 1814, the defendant executed an indenture of grant accordingly to the plaintiff, for the life of the defendant, and that L. A. joined in the deed as surety, and also in a warrant of attorney; that previously to the execution of the deeds, the defendant was indebted to H. and G. in £90, which had been advanced by them to him; that, on the said 24th of November, 1814, and previously to the execution of the securities, G. demanded payment of the said sum of £90 from the defendant, and told him, that he must pay him that sum out of the £630, and must also pay him and H. £50 for their charges of preparing the securities; that the defendant, being then greatly distressed for money, had no alternative but to comply. That G. then, as agent of the plaintiff, produced the sum of £630 in Bank of England notes, and handed the same over to the defendant, who thereupon executed the deed; and that immediately upon such execution, *he returned to G. the said sum of* £90, *and also paid H. and G. the said sum of* £50 *for the costs of preparing the securities.* That the defendant had no communication with the plaintiff, but the treaty was entirely negotiated by H. and G., as the agents of the plaintiff. The Court was of opinion, that these circumstances constituted a case of a retainer of part of the consideration-money by the grantee's agent, and that the annuity must therefore be set aside on the same terms as in the last case, on the authority of which they particularly relied. *Best*, C. J., remarked, that though H. and G. might be entitled to the £50 charged for costs, *there was no pretence for saying that they had a right to demand or extort from the defendant* £90 *for the debt previously due to them.*[J.]]

(*a*) This, of course, was immaterial; the assignee could not be in a better situation than the grantee.

ANNUITY ACT. *Stat.* 53 *Geo.* 3.

Retainer of part of consideration.

Remarks upon *Calton* v. *Porter.*

[J. *Calton* v. *Porter* is certainly a strong case, particularly in reference to the sum of £90. No bill of costs appears to have been delivered for the £50 retained for costs, but the learned Chief Justice grounded his judgment less on the payment of this sum, than the exaction of the debt of £90, antecedently due to H. and G.; though it was not denied that the latter was a *bonâ fide* debt, the money having been actually advanced to the grantor by them. It has, certainly, always been considered, that, if the consideration-money be once placed within the control of the grantee, he may simultaneously pay a debt actually due from him to any person out of it; and it is not easy to see the difference in principle between a debt due to the grantee or his agent and any other person, provided a fair opportunity is given to the grantee of paying it or not out of the consideration-money. It is probable, that the Court, in this case, conceived that no such opportunity was afforded; and that the exaction by H. and G., previously to the payment of the consideration-money, of a promise from the grantor to pay them the £90, coupled with the subsequent payment, virtually amounted to a retainer of that sum.J.]

Grantee's agent may receive his costs from the grantor out of the consideration-money.

[J. It is not to be inferred, however, from the preceding cases, that the grantee's agent is precluded from receiving from the grantor, at the time of the execution of the deeds, out of the consideration-money, his bill of costs for preparing the securities, &c., provided this is not made a colourable pretence for extortion. Thus, in *Mouys* v. *Leake*, 8 T. R. 411, 416, which arose under the old Annuity Act, where it appeared that the whole consideration was paid at the execution of the securities; but a demand was made upon the grantor by the clerk or agent of the grantee's attorney for law charges, which it was originally agreed that the grantor should pay, and which he then paid out of the consideration-money; it was attempted to set aside the securities on the ground that part of the consideration-money had been retained. Lord *Kenyon* observed, that here all the consideration-money was paid to the grantor, who, being indebted to the person who drew the writings for the expense of those writings under a previous agreement, immediately paid the amount of the bill: it was a payment to his attorney under the previous contract. *There is nothing more unreasonable in this than in his paying any other debt, after receiving the consideration-money for the annuity.* So, in *Phillips* v. *Crawfurd*, 9 Ves. 215, 219, where the objection as to the payment of the consideration was, that £30 was paid at the same time by the grantor to the agent of the grantee for the expense of preparing the deeds; the

ANNUITY ACT. *Stat.* 53 *Geo.* 3.

Retainer of part of consideration.

evidence of the agent as to that being, that, after the transaction was completed, he received from the grantor £30, whether part of the consideration or not he could not say; but that no part of the consideration was retained by him. Sir *W. Grant*, M. R., said, "I suppose, generally, a man who wishes to raise money is at the expense of preparing the deeds by which that money is procured; and when once it is actually in his possession and power, *it can make no difference whether he pays the attorney, who prepared the deeds, with part of that money, or any other fund.* If an extravagant charge is made, as a colour for reducing the consideration, that is a different case. But nothing of that sort is suggested, as to that part of the £30 got back to the purchaser, &c. If the objection holds, the grantor could not bear even the least proportion of the expense without wholly vitiating the grant, which could not be the intention of the act." Upon an appeal, the Lord Chancellor confirmed his Honor's decree. 13 Ves. 475.[J.] [See *Maber* v. *Hobbs*, 2 You. & C. 322: *Ex parte Bogue, Re Basun*, 3 Deac. 315.]

Rule, where the solicitor is himself the grantee.

[J. If the grantee himself be concerned as attorney for the grantor in preparing the securities, he may, equally with any other person, receive his bill of costs; but he must not charge procuration-money. *Broomhead* v. *Eyre*, 5 T. R. 597. In a modern case, where the grantee, who prepared the securities, made a charge for searching for incumbrances, which it appeared was not done; *Gibbs*, C. J., in an action on the bond, which was alleged to be invalid on this ground, left it to the jury to say, whether this charge was made with intent to keep back part of the consideration-money, or whether it was made through inadvertence: the finding was in favour of the plaintiff, and the Court refused to disturb the verdict. *Hurd* v. *Girdlestone*, 6 Taunt. 8. Though these cases occurred under the old act, the principle seems to apply to the present act.J.]

[J. Of course, where the person concerned as agent for several grantees improperly retains a sum of money for commission and expenses on the several annuities, the *whole* of them is thereby vitiated, though it be proved that the sum retained consisted of a bank note paid him by *one* of the grantees, as part of the consideration-money for his annuity. *Jones* v. *Silberschildt*, 4 Bing. 26.J.]

[J. In the case of *Aston* v. *Gwinnell*, it was contended that part of the consideration-money for an annuity had been returned or retained, and the facts on which this allegation was founded, as detailed by the Lord Chief Baron, were as follow:—

Payment of

"It was part of the contract that the grantor should pay out of

ANNUITY ACT. *Stat.* 53 *Geo.* 3.

Retainer of part of consideration.

consideration-money for an annuity to a trustee to pay costs and debts of the grantor, held to be good.

the consideration-money the expense of the deeds, that the money should be paid to a trustee, and that he should apply it first to the payment of these costs, then of other debts due from the grantor, and if there should be any surplus, to pay that surplus to him. The transaction was executed according to these stipulations. There seems to be no ground for calling this either a retainer or a return of part of the consideration-money." His lordship, after adverting to the cases of *Mouys* v. *Leake*, and *Hurd* v. *Girdlestone*, observed, "I can see no objection to the principle of these cases; if it be lawful to stipulate for the payment by the grantor of these costs, it seems reasonable enough that the transaction should not be avoided by the execution of this stipulation in the manner mentioned in those cases. This is a more favourable case; the consideration here was paid to a third party as a trustee for the grantor, and by him was applied in satisfaction of the bill. It is true, this third person was the partner of the grantee, and interested in the bill; but it is difficult to see that it can be either a return or a retainer when it is a transaction with a third party, when the purpose is just and lawful, and would not have been so with the grantee himself or his attorney representing him." *Aston* v. *Gwinnel*, Exchequer, 29 Jan. 1829, MS.[J.] [Now reported, 3 You. & J. 136.]

General observations upon the preceding cases.

[[J.] A review of the cases occurring under this section of the act, will serve to shew the necessity of extreme caution in the management of annuity transactions, in avoiding whatever may, by possibility, be construed as a retainer or return of part of the consideration-money. The money should be paid to the grantor by the grantee himself, or, at all events, by some agent who is wholly unconnected in previous pecuniary transactions with the grantor, to prevent the annuity being improperly mixed up with those transactions. The employment of the grantor's agent to pay the consideration-money, which constitutes him also the agent of the grantee, is therefore always objectionable, and is indeed the circumstance which led to the overturning the securities in most of the preceding cases; for it is observable that, in every instance in which the securities were set aside, the money was paid, not by the grantee himself, but by an agent, whose mis-appropriation of the money formed the ground for invalidating the securities. If the grantor and grantee have separate agents, of course the one is not responsible for the conduct of the agent of the other; and therefore, in a case where, after the grantee had paid down the consideration-money, the grantor's solicitor took up part of it for costs, before the money actually reached the hands of the grantor, it was held, that the

ANNUITY ACT. *Stat.* 53 *Geo.* 3.

grantee was not affected by this act. *Mootham* v. *How*, 5 Taunt. 596. If there have been any previous accounts between the grantor and grantee themselves, the consideration for the annuity should be kept quite distinct from them. Where a demand is made on the grantor for the costs of preparing the securities (as it commonly is) a bill of costs should be regularly delivered, and the consideration-money should first be paid over to the grantor, so as to afford him an opportunity of paying it out of such money or not, or of making any objection to the charges, which should be fair and reasonable, and made out in detail in the usual manner. If any unfairness or extortion be practised, the Court, we have seen, will not be baffled in its authority to set aside the securities by any technical or colourable compliance with the terms of the act; as, by paying the whole consideration-money to the grantor, in the presence of the attesting witnesses, and then, the latter having left the room, dealing with it in a manner directly at variance with the spirit and intention of the legislature, by paying to the grantee's agent large sums for commission, &c., retaining sums to pay the arrears of former annuities, and other such purposes.[J.]

Retainer of part of consideration.

Sect. 8.—Vacating contracts with infants.

[J. On this section it has been held, that a joint and several grant of annuity by an infant and another, though void as to the infant, is valid as to his co-grantor. *Gillow* v. *Lillie*, 1 Scott, 597. See also *Hare* v. *Ogle*, 4 Taunt. 10.J.]

Sect. 10.—Excepting out of the act annuities granted by will, &c.

What annuities not necessary to be inrolled under stat. 17 Geo. 3.

[J. The act of 17 Geo. 3, c. 36, only extended to annuities granted for a "pecuniary consideration." Under this statute, therefore, it was necessary only to register those annuities, which were granted in consideration of *something paid*. Thus, where an annuity was granted in consideration of the grantee resigning his situation as master of an academy, in favour of the grantor, it was decided that a memorial of the grant need not be registered; even though, at the time of the grant, the grantee agreed to assign to the grantor his household furniture, at an appraised value, and to lend a sum of money to the grantor, to be repaid with interest. *Hutton* v. *Lewis*, 5 T. R. 639; Hunt, 343, 2d ed.: *Crespigny* v. *Wittenoor*, 4 T. R. 793. So it was decided, that no memorial was necessary to be inrolled of a grant of an annuity in consideration of the grantee resigning her trade and leasehold premises to the grantor, though

ANNUITY ACT. *Stat.* 53 *Geo.* 3. *Annuities excepted.*

part of the consideration was book-debts and stock in trade. *Doe* d. *Johnstone* v. *Phillips*, 1 Taunt. 356. Again, where a bond was given to secure an annuity by the obligor to his mother, in alleged consideration of natural love and affection, in which bond the defendant joined as surety; and it appeared that, on the occasion of this bond being given, the mother had sold her trade, and with the money arising therefrom, and what other money she possessed, had placed out her two sons in business; and it was agreed, that in consideration thereof they should give her two annuity bonds, of which the present was one. The Court thought that this case was governed by *Doe* d. *Johnstone* v. *Phillips*, 1 Taunt. 356, and that the bond did not require inrolment; *Keats* v. *Hick*, 5 J. B. Moore, 629; and the judgment of the Court of Common Pleas was affirmed on a writ of error in the King's Bench. See 2 B. & Cr. 69. So in the case of *Cumberland* v. *Kelly*, 3 B. & Ad. 602, it was held, that an annuity granted in consideration of the transfer of a sum of £3 per cent. Consols did not require inrolment; stock, though immediately convertible, not being money.[J.]

What annuities need not be inrolled under stat. 53 Geo. 3.

[J. In the 10th section of the late Annuity Act, the exception in question extends to "any voluntary annuity or rent-charge granted without regard to pecuniary consideration *or money's worth*." But the words "money's worth" have received a narrow construction, having in many instances been considered as applying only to cases in which the object of the annuity was to raise money, and not where it was granted in consideration of the conveyance of an estate, or as part of a family arrangement, though the grantor received a valuable consideration at the time of granting it. Thus, in the case of *James* v. *James*, 2 Br. & Bing. 702; 5 J. B. Moore, 479, where, in a bond for securing an annuity, it was recited that the obligee was entitled to an interest in certain veins of coal for her life; and that, by indenture bearing even date with the bond, she had assigned such interest to the obligors, who, in consideration thereof, had agreed to pay her an annuity for her life; and the bond was then conditioned for the payment of that annuity. The Court of Common Pleas decided, that such an annuity was not within the act; which, it was considered, extended only to cases where the object of the grantor was to raise money either directly in money, notes, or bills, or else indirectly by goods, and not to any case of a *bonâ fide* sale of landed property, whether freehold (of inheritance), for life, or leasehold for years, in consideration of an annuity.J.]

Where granted in consideration of the conveyance of an estate.

[J. In the case of *Blake* v. *Attersoll*, 2 B. & Cr. 875; 4 Dowl. & Ry. 549; the plaintiff was, by his marriage settlement, entitled for

ANNUITY ACT. *Stat.* 53 *Geo.* 3. *Annuities excepted.*

life to the annual produce of £10,000, which his wife's father agreed to settle as her fortune. The father died in impoverished circumstances without having performed his agreement. The plaintiff secured by mortgage on his own estates a substituted sum of £10,000 to the trustees of the settlement, in consideration of the father's executors paying to him for his own use £5000, *and securing to him by their bond an annuity equivalent to the interest of the* £10,000 *for his own life.* The executors, therefore, in their representative capacity, received a benefit of £5000 in exchange for the annuity. This bond was not inrolled. The Court of King's Bench held that the annuity was not within the act; observing that, to bring an annuity within the act, there must be an actual *sale* of the annuity for money, bills, or goods. The Court viewed the transaction as a voluntary gift by the plaintiff of £5000 to his settlement trustees, and a concession by him of 10*s.* in the pound on the amount of the interest of that sum of £5000, which the father's estate proved insufficient to satisfy.[J.]

Where, though money passes, there is no actual sale.

Annuity granted in consideration of farm and farming stock.

[J. So, in the case of *Tetley* v. *Tetley*, 4 Bing. 214, where an action was brought on a bond given to secure an annuity of £10 to the obligor's father and mother for their lives, in consideration of their giving up to him a farm and farming stock worth £300. It was objected that the bond was void for want of inrolment; but the Court held that this was not a consideration for "money's worth" within the meaning of the act; which only applied to cases in which the object was to raise money or goods to be converted into money by the grantor; and not to such a case as the present, where the securing of the annuity was part of a family arrangement. Again, in the case of *Frost* v. *Frost*, 3 B. & Ad. 612, where A. being indebted to B. on a balance of accounts, it was agreed that, in lieu of the payment of £497, part of such balance, A. should secure the payment, after the decease of B., to his wife during the joint lives of herself and A. of an annuity of £450; it was held that the bond securing such annuity did not require inrolment. And in *Mestayer* v. *Biggs*, 1 Cr., M., & R. 110, the same was decided as to an annuity granted in consideration of the conveyance of a house. Again, in the case of *Massey* v. *Nanney*, 4 Scott, 256, where, by a marriage settlement, A., the uncle of the intended husband, in consideration of the marriage, and of the sum of £4000 advanced by the father of the intended wife, and of the natural love and affection which A. bore to his nephew, covenanted to pay an annuity to trustees during the joint lives of the husband and wife, it was held that the deed did not require to be inrolled, or any *ad valorem* stamp as upon the sale of an annuity

ANNUITY ACT.
Stat. 53 *Geo.* 3.

for £4000; and further, that the non-inrolment of an annuity could not be taken advantage of under the plea of *non est factum* (*a*).[J.]

Annuities excepted.

[J. The exception under consideration also extends, it will be observed, to annuities secured on *freehold* and *copyhold* lands of inheritance in possession, of equal or greater annual value than the annuity, over and above any other annuity, &c., which has been held to mean an annuity, directly and specifically charged on the property, and not to apply to one which, by the operation of a judgment merely might eventually affect it. *Walford* v. *Marchant*, 2 B. & Ad. 315.J.] [But *quære* now as to the effect of the stat. 1 & 2 Vict. c. 110, s. 13, *infra*, vol. 5, p. 31, which makes a judgment operate as a specific charge on the debtor's lands.] [J. It is clear that this clause of the statute embraces *equitable* interests, as was decided under the old act. *Amhurst* v. *Skinner*, 12 East, 263: *Tucker* v. *Thurstan*, 17 Ves. 131.J.] [Where a freehold estate of the annual value of £100 was devised in trust for the testator's daughter (who was married) for her separate use, during her life, with remainder in trust for all her children as tenants in common in fee, with an executory limitation which it was held had no operation under the circumstances of the case, and the daughter and three of her six children joined in charging an annuity of £48 upon the estate, it was held that the case came within the exception in the act. *Walford* v. *Marchant*, 3 Myl. & Cr. 550.]

Annuities secured on land.

Inrolment not necessary where secured on lands of surety.

[J. It has been held, that a person who concurs in the grant as surety, is a grantor within the meaning of the section of the act. And, therefore, where A. and B. granted an annuity to C., secured on the real estate of A., who it was declared joined in the grant as surety for B., the estate being of sufficient annual value, it was held that the securities did not require inrolment. *Darwin* v. *Lincoln*, 5 B. & Al. 444. If an annuity be secured on lands in fee of equal annual value, it is of course immaterial that the annuity be also secured upon leasehold property. *Ex parte Mitchell*, 2 East, 138. In practice, little advantage is taken of this exemption; for, to prevent any question or mistake as to the adequacy of the value of the lands, (in regard to which the grantor's covenant is not conclusive upon the grantor by way of estoppel, *Doe* v. *Ford*, 5 Nev. & M. 209), it is usual to memorialize the annuity in every case.J.]

Assignment of dividends on

[J. Where a person, entitled to dividends on stock in the funds for his or her life, sells and assigns the whole, or a part of those divi-

(*a*) [See *Mestayer* v. *Biggs*, 1 Cr., M., & R. 110. As to pleading a defect in the memorial, see also *Hickes* v. *Cracknell*, 3 Mee. & W. 72.]

ANNUITY ACT. *Stat.* 53 *Geo.* 3. *Annuities excepted.*

dends, for a pecuniary consideration, such a grant is not within the act, and does not require inrolment; *Browne* v. *Like*, 14 Ves. 302. But, *contra*, where the sale is not of a specific portion of such dividends, but of an annuity out of them. In the case of *Charretie* v. *Vause*, 1 Sim. 153, A., entitled for life to the dividends on £18,000 3*l.* per Cent. Consols, by indenture, in consideration of £1100, assigned to B. £150, part thereof; providing, however, that, as there would be only one month's interest due in July next, when the next half-yearly dividend would become payable, (the deed being entered in June), B. should receive 12*l.* 10*s.* only of that dividend. Sir *J. Leach*, V. C., thought, that this conclusively shewed that it was not, as it purported to be, a sale of a proportion of the dividends, but a grant of an annual sum charged on this fund, and, therefore, required inrolment. See also *Hood* v. *Burlton*, 2 Ves. jun. 138.[J.]

stock requires inrolment, when.

Further charge needs no inrolment.

[An instrument operating by way of further charge does not require inrolment. See *Ex parte Price*, Buck, 22; 3 Madd. 132. In *Aston* v. *Gwinnell*, 3 You. & J. 136, where the grantor granted two annuities, which were duly inrolled, and afterwards granted another annuity to the same party, and by the same instrument further secured the former annuities, it was held, that the memorial of the latter annuity was complete, without any reference to the further securities given for the first.]

Substituted annuity.

[Where an annuity of £180 was granted with a warrant of attorney, and other securities, which were duly inrolled, and two years afterwards another deed was executed between the parties, by which the grantee covenanted to accept an annuity of £150 in lieu of the former annuity, in consideration of which the grantor covenanted not to redeem the annuity for five years; and it was directed that the securities for the former annuity should be securities for the new one. It was held, that this last deed should have been inrolled; and this not having been done, the securities were set aside for *both* annuities. *Earle* v. *Browne*, 2 Per. & D. 393; 10 Ad. & E. 412: see *Hammond* v. *Foster*, 5 T. R. 635.]

Consequences of Annuities being rendered void, or liable to be vacated by the Provisions of the Act.

Variation in the cases where the memorial is defective, and where part of the consideration-money is returned, &c.

[J. It will be perceived that there is a material distinction between the 2nd and 4th sections, directing the inrolment of the memorial, and requiring the names of the parties beneficially entitled to be inserted in the deed, and the 6th section, providing for the case of any part of the consideration-money being returned, &c. By the

ANNUITY ACT. *Stat.* 53 *Geo.* 3.

Avoidance of Annuities.

two former, the instrument is simply declared to be null and void, and the Court has no discretion, whether the defect in the memorial be apparent on the face of it, or be disclosed by affidavit. *Ex parte Lewis*, 2 Ad. & El. 135: *Lewis* v. *Hooper*, 4 Nev. & M., *S. C.* In the latter, it is merely provided, that *it shall be lawful* for the party to apply to the Court in which any action shall be brought, or judgment entered, &c. to stay proceedings: and *it shall be lawful for the Court* to order *every* deed &c. to be cancelled, and the judgment to be vacated. It should seem, therefore, that, in the latter case, the application to the Court by motion, is the only mode of avoiding the securities, and that the circumstances mentioned in the 6th section would form no defence to an *action* brought on such securities. Another consequence of this difference in the language of the clauses in question is, that in cases falling within the 2nd and 4th sections, namely, where the security is void for want of a sufficient memorial, or by reason of the names of the parties beneficially entitled not being stated, a Court of law has no jurisdiction over the securities other than the warrant of attorney and judgment, and cannot order the grant and the bond to be cancelled, notwithstanding that the defect in the memorial applies to these: *Storton* v. *Tomlins*, 10 J. B. Moore, 172; 2 Bing. 475 (*a*). See also *Ex parte Chester*, 4 T. R. 694: *Denne* v. *Dupuis*, 11 East, 134: *Appleby* v. *Smith*, 3 Anst. 865; though if any action were brought upon the bond or covenant in the grant, the defect in the memorial of such instrument would, of course, be a defence to the action, and might formerly have been given in evidence, under the plea of *non est factum: Hill* v. *M. & W. Waterworks Company*, 2 Nev. & M. 573: *Mestayer* v. *Biggs*, 1 Cr., M., & R. 110; but the new rules of pleading require that it should be specially pleaded: *Massey* v. *Nanney*, 4 Scott, 258. In order to obtain possession of the deeds in such cases, the grantor may file a bill in equity, which was done in many instances under the old act: *Byne* v. *Vivian*, 5 Ves. 604: *Byne* v. *Potter*, Id. 609: *Bromley* v. *Holland*, Id. 610; G. Coop. 9: *Hoffman* v. *Cooke*, 5 Ves. 623: and the Court, it seems, will direct a re-conveyance, though in strictness this is unnecessary, as the act declares the deeds to be void. In *Bromley* v. *Holland*, G. Coop. 9, Lord *Eldon* was of opinion, that it was proper to have the trustee of the legal estate before the Court, and to pray that he might be directed to re-convey, especially as a Court of law had previously refused to set

Court of law cannot compel the delivery of deeds void on account of defective memorial.

Grantor's remedy in equity.

(*a*) [J. But in the case of *Lewis* v. *Hooper*, 4 Nev. & M. 318: *Ex parte Lewis*, 2 Ad. & El. 135, *S. C.*, the rule for vacating the securities seems to have extended to the vacating of the indenture of grant. J.]

ANNUITY ACT. *Stat.* 53 *Geo.* 3.

aside the annuity. And here it should just be noticed, that a suit in equity to declare the securities void, and for a re-delivery of the deeds, may be made in the first instance without any previous application to a court of law; and the fact that such an application has been unsuccessfully made, is immaterial. *Bromley* v. *Holland*, G. Coop. 9. Indeed, it sometimes happens, that it is in a Court of equity alone, in a suit of this nature, or a regular action at law, that a grantor has an opportunity of putting the validity of the securities to the test by obtaining a judicial declaration on the subject; for where the grantee neither enters up judgment on his warrant of attorney, (if he have one), nor brings an action, there are no means of bringing the question summarily before a Court of law. An action of trover, probably, would lie for the deeds; but this would not, as already observed, afford to the grantor a complete remedy, as the Court could not direct a re-conveyance. Such a case, however, as the one supposed, could scarcely arise, except where the annuity bore but a small proportion to the value of the estate, so that the inconvenience to the grantor from the detention of the title-deeds might be greater than that to the grantee from the non-payment of the annuity; and such cases, it is well known, are of rare occurrence.[J.]

Vacating securities.

Terms upon which securities vacated.

[J. The terms upon which Courts of law and equity set aside annuities are the same, namely, the re-payment of the consideration-money, with interest, at £5 per cent.; *Mence* v. *Hammond*, 6 J. B. Moore, 491; allowing also to the grantee, it seems, disbursements for stamps, attendances, and other charges relating to the conveyances; *Williamson* v. *Goold*, 8 J. B. Moore, 325; but not for premiums paid for life insurances, unless it were agreed that the grantor should pay them. *Burdon* v. *Browning*, 1 Taunt. 520: *Ex parte Shaw*, 5 Ves. 622: *Williamson* v. *Goold*, 8 J. B. Moore, 325: *Hoffman* v. *Cooke*, 5 Ves. 623, 633. If the terms upon which equity directs a re-conveyance, and the deeds to be delivered up, are not complied with, the grantor will lose the benefit of the decree; *Bromley* v. *Holland*, G. Coop. 25; though the Court would no doubt enlarge the time for a reasonable period, upon application, as Lord *Eldon* has denied the analogy of such a case to a suit by a mortgagor for redemption; G. Coop. 19: in which it is well known no extension of time is admitted. Courts of law have also acted upon the same principle in the exercise of their summary and discretionary jurisdiction. This occurred in the case of *Champneys* v. *St. John*, where the facts on the point in question (which are not reported) are as follow:—On the 21st of November, 1821, the Court of Queen's Bench

Consequence of grantor's not complying with the terms imposed by the Court.

Grantor de-

ANNUITY ACT. *Stat.* 53 *Geo.* 3.

on the defendant's affidavit, granted a rule *nisi* for setting aside the securities, on the ground of part of the consideration-money being retained, and the memorial being defective in not stating the names of the parties by whom the annuity was to be beneficially received, and likewise not truly stating the manner in which and the persons to whom the consideration-money was paid. On the 29th of January, 1822, this rule was made absolute, and it was referred to the prothonotary to ascertain the amount of principal and interest due, giving the defendant credit for the payments made to him on account of the annuity, and allowing him interest thereon; and that the deeds should be deposited with the prothonotary until further order. The prothonotary reported the sum of 12,678*l.* 3*s.* 3*d.* to be due on the 3rd of May: and, on the 14th of June, 1823, the Court ordered that, on payment of this sum with interest thereon from that day, the deeds should be delivered up to be cancelled. The payment of this sum not having been made, the Court, on the application of the plaintiff, in January, 1824, *fixed the 12th of February for the payment, and ordered that, in default, the rule for setting aside the securities should be discharged, and the securities delivered up to the grantee.* This time was several times enlarged; first, to the first day of Easter Term following, then to the 20th of May, and afterwards to the last day of Easter Term; and payment not having been made on the latter day, the Court, on the 16th of November following, *finally rescinded the order for setting aside the securities.* MS.[J.]

Grantee deprived of the benefit of rule setting aside securities, from non-compliance with the terms.

[J. Another course is open to a grantee, whose annuity has been set aside by a rule of Court, namely, to bring an action against the grantor for the consideration-money, in which action he must allow him credit for the sums (if any) received on account of it, and interest; and if the grantee has already received more than the principal and interest would amount to, he would of course be nonsuited. *Hicks* v. *Hicks*, 3 East, 16; see also *Cowper* v. *Godmond*, 3 Moo. & Sc. 219. But the grantee is not bound to wait until the securities have been judicially declared to be void, in order to found his claim to the consideration-money; for if the grantor has treated them as such—for instance, if, on the allegation that the annuity was void on account of the memorial being defective or otherwise, he has negotiated with the grantee for a compromise, — this would be sufficient to sustain the grantee's action for the consideration-money; *Waters* v. *Mansell*, 3 Taunt. 56; *à fortiori*, if, upon the discovery of a defect, he has refused to pay the annuity or execute fresh securities. See *Weddell* v. *Lynam*, 1 Esp. 309. It was

Grantee may bring an action for consideration-money, when.

ANNUITY ACT. *Stat.* 53 *Geo.* 3.

Vacating securities.

No action against surety.

ruled in one case at Nisi Prius, that the grantor having become bankrupt in the interval between the granting of the annuity and its being set aside, his certificate will be a bar to the action; *Walker* v. *Liscarry*, 6 Esp. 98; but, in contradiction of this doctrine, it has been more recently decided, that the cause of action is to be considered as arising at the time when the objection is taken and not before, and consequently the fact, that more than six years have elapsed since the granting of the annuity, does not constitute a defence to the action. *Cowper* v. *Godmond*, 3 Moo. & Sc. 219. It has been held, that the grantor's claim to a return of the consideration-money is confined to the party who received it, and does not extend to a person who joined in the grant as surety, though he signed the receipt. *Straton* v. *Rastall*, 2 T. R. 366.[J.]

At law and in equity, on an annuity being vacated, an account is taken of the consideration and interest thereon, and of the payments of the annuity and interest thereon, and the balance (if any) is paid to the grantee; but if the grantee has been overpaid, it seems the surplus cannot be recovered.

At law, where an annuity is set aside for informality, the practice now is as stated, *ante*, p. 112; *Drake* v. *Rogers*, 4 Moore, 409: *Poole* v. *Cabanes*, 8 T. R. 330. In equity, where an annuity was set aside for an informality in the memorial, a general account was decreed of the consideration and costs, and of all money received under the annuity; the balance to be paid, the securities delivered up, and a re-conveyance; but if it appeared the annuitant was overpaid, he was to pay such overplus to the grantor. *Byne* v. *Vivian*, 5 Ves. 604. However, where the defendant admitted he had received more than was due to him for principal and interest, the securities were decreed to be delivered up to be cancelled, and that the defendant should pay the plaintiff the costs of the suit; but the Court did not order the defendant to repay the surplus. *Byne* v. *Potter*, 5 Ves. 609. The money being voluntarily paid, it seems the surplus cannot be recovered. *Bromley* v. *Holland*, 5 Ves. 618; 7 Ves. 24; G. Coop. 9.

[J. The point did not arise in this case, as it does not appear that the grantee had received more than the amount of the principal and interest. Lord *Eldon*, however, though he expressed his doubts upon the principle, seems to have considered it to be an established doctrine since the case of *Byne* v. *Potter*, that the excess of the monies paid by the grantor above the amount of the principal and interest could not be recovered from the grantee. It seems, also, from a slight allusion made to the point in a late case, that Mr. Justice Holroyd considered such cases to fall within the principle of the cases respecting illegal wagers, and other voluntary payments, in which it has been held that money actually paid over cannot be recovered back, 6 B. & Cr. 656; and such there is little doubt would be the determination of the Courts on the question.J.]

ANNUITY ACT.

Vacating securities.

[J. And here it may be noticed that where a grantee has received an annuity until its expiration, without any intention being evinced on the part of the grantor to avoid the grant, by availing himself of a defect in the memorial, it is not competent to the grantee, after the death of the *cestui que vie*, to treat the grant as void, and maintain an action for the recovery of the consideration money; for though the act declares the securities to be void, yet this makes them voidable only at the will of the grantee, and the law will not allow a man to take advantage of his own wrong. *Davis* v. *Bryan*, 6 B. & Cr. 651.J.]

Grantee cannot recover consideration money after grantor's acquiescence in the payment of it until its expiration.

[J. It is not incumbent on a person claiming under an annuity deed to prove that it has been duly memorialized. The *onus probandi* lies on those who object to its validity. *Doe* d. *Lewis* v. *Bingham*, 4 B. & Al. 672 (*a*). Where a suit in equity was instituted by an annuitant to establish a lien upon certain lands, Sir *J. Leach* refused to entertain an objection to the validity of a grant for a defect in the memorial, which was not noticed in the pleadings in evidence. *Dunn* v. *Calcraft*, 2 Sim. & Stu. 56. It has been held, that where a third person, wholly unconnected with the grant, and for a separate consideration, (namely, a certain commission), by a letter to the grantee guaranteed the payment of an annuity, it was not necessary to memorialize this guarantee. *Sandilands* v. *Marsh*, 2 Barn. & Ald. 673.J.]

As to proof of annuity being memorialized.

Where an annuity had been assigned for a less sum than the original purchase-money, an account was directed of the consideration paid by the original grantee of the annuity, with interest at *five per cent.*, and of the payments of the annuity to the grantee, or any persons claiming under him by assignment or otherwise, to be applied in discharge of the interest and principal of the consideration; and if the consideration, with interest, should appear to be fully repaid; or, if not, upon payment by the plaintiff of what should be remaining due from him, the securities to be delivered up, &c., with costs; the assignee, unless under special circumstances, being in the situation of the grantee. *Bromley* v. *Holland*, 5 Ves. 610; 7 Ves. 3, 29; [1 Salk. 155; 3 P. Wms. 251, n.; G. Coop. 9.]

An assignee generally in the same situation as the grantee.

But the grantee is not allowed in the account of the premiums for insuring the life of the grantor, and costs incurred in supporting the annuity. *Ex parte Shaw*, 5 Ves. 620. However, in some cases the premiums paid for insurance have been allowed, under particular circumstances: as where the bill offered to pay principal and

In some cases, premiums paid for life insurance have been allowed.

(*a*) [It is not stated whether the certificate of enrolment was indorsed upon the deed.]

ANNUITY ACT.

Vacating securities.

interest and other reasonable demands, and a letter was admitted in evidence, written by the grantor, prior to the grant, in another negociation, which did not take place, and in which he proposed the insurance of his life as a reasonable thing. *Hoffman* v. *Cooke*, 5 Ves. 623, 653. And see *Gwynne* v. *Heaton*, 1 Bro. C. C. 11.

Master directed to make rests.

In *Hoffman* v. *Cooke*, it was directed that the Master should make rests upon the payment of each sum paid for the insurance, and also upon each sum paid to the annuitant on account of the annuity, and compute interest upon every such payment at *five per cent.*; and the plaintiff paying to the annuitant what should be found due upon the balance of the said accounts, it was ordered, that satisfaction should be entered up on the judgment, and the annuity and the policy of insurance be re-assigned. 5 Ves. 633.

NOTICE.

For the Forms of Notices of intention to repurchase, &c., see *post*, Vol. 6, tit. NOTICE, p. 566.

Previous *bonâ fide* debt, consideration for granting annuity, may be recovered in *assumpsit*, on annuity being set aside for informality in memorial.

If the consideration for an annuity be partly a debt *antecedently* due for goods sold, and the residue of the consideration be money paid at the time of executing the deed; and the annuity be set aside for informality in registering the memorial, the grantee may recover back the whole consideration. *Shove* v. *Webb*, 1 T. R. 732. But the Court intimated a very clear opinion, that if any part of the consideration had been for goods delivered *at the time*, which by agreement were to stand for so much money as the value put upon them, then the question would have fairly arisen, whether, as this was in the teeth of the act of Parliament, and one of the mischiefs the act meant to remedy, as great frauds were practised in palming goods upon the purchaser [*read* grantor] of the annuity, which were not of half (*b*) the estimated value: then, the Court said, the question would fairly have arisen, whether, if the securities were set aside, the law would have raised any implied promise to pay the value of the goods; and the maxim might have been urged *quod ex maleficio non oritur contractus.* [Whether an annuity can now be granted in consideration of goods, has not been directly determined. There seems, however, to be nothing in the late act to invalidate such a transaction. See sect. 6, and *Blake* v. *Attersol*, 4 Dowl. & Ry. 549; 2 B. & Cr. 882.]

Married woman may avoid annuity without returning consideration money.

[J. A married woman who has charged her separate estate to secure an annuity granted by her husband, may file a bill to avoid the grant for a defect in the memorial, without offering to return the consideration money; for as she has no power to bind herself

(*b*) This is a colloquial expression, and is not to be understood literally.

ANNUITY ACT.

Vacating securities.

by contract, but only a power of *disposition*, she is not liable in respect of such property to those equities, which arise out of contract and general engagement. *Aguilar* v. *Aguilar*, 5 Madd. 414. See also *Jones* v. *Harris*, 9 Ves. 486. *Duke of Bolton* v. *Williams*, 2 Ves. jun. 145 (*c*). It was also decided in *Aguilar* v. *Aguilar*, that where property of the husband, and property also of the wife, were charged with an annuity granted by the husband, who subsequently charged his own property with further annuities, and took the benefit of the Insolvent Debtors' Act, the wife was entitled as against the assignee, and also against the subsequent annuitants, to have the husband's property first applied.[J.]

Effect of wife's engagements on her separate estate.

(*c*) As to the liability of the wife's separate estate to answer for her engagements and acts in general, (upon which the cases are not satisfactory), see *Norton* v. *Turvill*, 2 P.Wms. 144: *Hulme* v. *Tennant*, 1 Br. C. C. 16: *Wagstaffe* v. *Smith*, 9 Ves. 521: *Nantes* v. *Corrock*, Id. 182; 2 Dick. 562: *Heatley* v. *Thomas*, 15 Ves. 596: *Bullpin* v. *Clarke*, 17 Ves. 365: *Stuart* v. *Kirkwall*, 3 Madd. 389: *Greatley* v. *Noble*, Id. 79: *Murray* v. *Barlee*, 4 Sim. 82; 3 Myl. & K. 209: *Field* v. *Sowle*, 4 Russ. 112: *Nail* v. *Punter*, 5 Sim. 562: *Major* v. *Lansley*, 2 Russ. & M. 355: *Aylett* v. *Ashton*, 1 Myl. & Cr. 105: *Owens* v. *Dickinson*, (before Lord *Cottenham*, C., 1840), 4 Jurist, 1151; and *infra*, tit. SETTLEMENT.

ANNUITIES.

PRECEDENTS.

1. AGREEMENT TO GRANT AN ANNUITY SECURED, &c., WITH OR WITHOUT A SURETY.

1. AGREEMENT *for granting an* ANNUITY *for the Life of the Grantor, or for the Life of the Grantee, or for the Lives of other Persons, to be secured on* FREEHOLD, COPYHOLD, *or* LEASEHOLD *Premises, with or without a* SURETY.

Parties.

ARTICLES OF AGREEMENT entered into, the —— day of ——, 18—; BETWEEN [*grantor*], of &c., of the one part, and [*grantee*], of &c., of the other part.

Agreement to deliver abstract.

FIRST, the said [*grantor*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantee*], his executors, administrators, and assigns, to deliver unto the said [*grantee*], on or before the —— day of —— next, at the costs and charges of the said [*grantor*], a full, complete, and perfect abstract of the title

FREEHOLD.

of the said [*grantor*], to ALL THOSE (*a*) freehold messuages

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COPYHOLD.

(*a*) If the premises be copyhold, say,

"ALL THOSE customary or copyhold messuages, &c., situate, &c., and now held by the said [*grantor*] for an estate of inheritance, according to the custom of the manor of ——, in the said county of ——, subject to the rents and services therefor due, and of right accustomed."

FOR LIFE OR LIVES.

If the premises be held for a life or lives, say,

"ALL THOSE messuages, &c., situate, &c., now held by the said [*grantor*] for the life of [*nominee*], of &c. (or lives of [*nominees*], of &c., and the lives and life of the survivors

tenements, farms, lands, and hereditaments of the said [*grantor*] situate at——, in the county of ——; And if the counsel of the said [*grantee*] (*b*) should be of opinion that the estate of the said [*grantor*] therein is a sufficient security for the annuity hereinafter mentioned, then that he the said [*grantor*] will, within —— from the date hereof, in consideration of the sum of £——, grant unto the said [*grantee*], his executors, administrators, and assigns, an annuity of £—— for the life of the said (*c*) [*grantor*], (*or* [*grantee*]), to be payable quarterly from the time of granting

1. AGREEMENT TO GRANT AN ANNUITY SECURED, &c., WITH OR WITHOUT A SURETY.

Premises.

If title good, to grant annuity.

LIFE OF GRANTOR, OR GRANTEE.

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and survivor of them) under and by virtue of an indenture of feoffment dated on or about &c.; and made &c., and afterwards perfected by livery of seisin*; *But* the said [*grantor*] shall not be required to produce any further evidence of the title to the said premises, than the said lease [and a conveyance thereof from the said [*lessee*] to the said [*grantor*].]"†

Reference to lease,

with livery of seisin.

If the premises be leasehold, for years, or for years determinable on lives, say,

LEASEHOLD FOR YEARS, OR FOR YEARS DETERMINABLE ON LIVES.

"All those messuages, &c. situate, &c., now held by the said [*grantor*] for the remainder of a term of —— years, from the —— day of——, (*or*, for the remainder of a term of —— years, if [*nominees*], of &c., any or either of them, should so long live) granted by indenture dated &c., and made &c.; *But* the said [*grantor*] shall not be required to produce any further evidence of the title to the said premises, than the said lease (and all subsequent deeds, evidences, and writings relating thereto)."

Reference to lease.

(*b*) *Vide ante*, p. 45, (*a*).

(*c*) If for the lives of nominees, say,

LIVES OF NOMINEES.

"[*nominees*], of &c., and the lives and life of the survivors and survivor of them, to be payable quarterly from the time

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* There is not any necessity in this instance to say, "subject to the rents, &c.," because the grantor should covenant to pay the rents. And in the case of a lease for lives, it is prudent to take an underlease for ninety-nine years, if the nominees should so long live; and in the case of a lease for ninety-nine years, if nominees should so long live, to take an underlease for ninety-eight years, or any less period than ninety-nine years, if the same nominees should so long live. [*Vide infra*, Vol. 5, p. 508.]

Underlease preferable on granting annuity out of leaseholds.

† *Vide ante*, pp. 70, 55.

1. AGREEMENT TO GRANT AN ANNUITY SECURED, &c., WITH OR WITHOUT A SURETY.

the same, with a proportional part thereof, up to and inclusive of the day of his death, and to be charged upon and issuing out of the said hereditaments and premises; and to be further secured by the bond and warrant of attorney to confess judgment of the said [*grantee*] (*d*) in such manner and form, and with such proper and requisite parties, and such usual covenants, remedies, and powers, either of sale or otherwise, for securing the payment thereof, as the counsel of the said [*grantee*] shall advise (*e*); the same securities (and also a memorial thereof, if the same should be deemed necessary (*f*)), to be prepared by the said [*grantee*]: but

Bond and warrant of attorney.

Usual covenants, powers, &c.

Securities to be prepared by grantee.

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of granting the same, with a proportional part thereof up to and inclusive of the day of the death of the survivor of them."

YEARS DETERMINABLE ON LIVES.

If for years determinable on lives, say,

"For the term of —— years, from the day of granting the same, *If* the said [*grantor*] (*or* [*grantee*] or [*nominees*], of &c., any or either of them) should so long live."

SURETY.

(*d*) If it be the agreement, say,

"and [*surety*], of &c., as his surety."

LEASEHOLD FOR LIVES.

(*e*) If the premises be leasehold for lives, and it be the agreement, say,

"*And* also a covenant by the said [*grantor*] from time to time to renew the said lease, at his own expense, for another life, when any of the said nominees or any renewed life shall die, and in case of his default a power enabling the said [*grantee*] to do the same, and for the monies and expenses incurred thereby, with interest for the same at the rate of 5*l.* per centum per annum, to become a charge on the said premises;"

LEASEHOLD FOR LIVES OR YEARS.

If the premises be leasehold, for lives, or years, say,

"*And also* a covenant by the said [*grantor*] to pay the rents reserved by the said indenture of lease, [*if for lives,* or any renewed lease of the said premises] and in case of his default, a power enabling the said [*grantee*] to pay the same, and for the monies and expenses incurred in consequence of such default, and payment with interest for the same, at the rate of 5*l.* per centum per annum, to become a charge on the said premises."

Memorial

(*f*) If the annuity be within section 10 of the act, a memorial would

the costs and charges thereof, and of these presents (and a duplicate hereof), and all other costs, charges, and expenses in anywise attending the granting and securing the said annuity to be paid and borne by the said [*grantor*]; AND ALSO at the execution of the said securities will deliver unto the said [*grantee*] all the title deeds and writings in the possession or power of the said [*grantor*] relating to the said hereditaments and premises (*g*). AND THE SAID [*grantee*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantor*], his executors and administrators, to pay the sum of £——

1. AGREEMENT TO GRANT AN ANNUITY SECURED, &c., WITH OR WITHOUT A SURETY.

All charges to be paid by grantor.

To deliver title deeds.

Agreement by grantor to pay purchase-money.

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be unnecessary: however, from an abundance of caution, a memorial is sometimes inrolled in cases where it is not strictly necessary.

sometimes unnecessary.

A memorial of an agreement *to grant* an annuity is not within the act, because it only embraces "deeds, &c., whereby any annuity or rent-charge shall *be granted*." [*Nield* v. *Smith*, 14 Ves. 491. Where an instrument operates as an agreement to grant an annuity only, of course no action at law can be brought for the arrears. *In re Locke*, 2 Dowl. & Ry. 603.]

Agreement to grant annuity not within the act.

(*g*) If it be the agreement, say,

"AND which securities, or one of them, shall contain a covenant by the said [*grantor*], at his own expense, to appear at any office of insurance in London or Westminster, or to produce such vouchers as the office may require, of his residence and health, from time to time, when required by the said [*grantee*], in order that he may insure any sum of money on the life of the said [*grantor*]; *And also* a covenant by the said [*grantor*] not to go upon the seas, or reside in foreign parts, or serve in any military or naval capacity, or do any other act contrary to the policy on which his life shall from time to time be insured, without giving notice of his intention to the said [*grantee*] at least one calendar month before doing any of the said acts; *And also* a covenant by the said [*grantor*], for payment of any additional premium for insuring any sum on his life, not exceeding £——, in consequence of his doing any of the said acts; *And also* a covenant by the said [*grantor*], at his own expense, to insure such part of the said hereditaments and premises as are liable to be destroyed by fire, in the full value thereof, in some insurance office in London or Westminster, in the joint names of the said [*grantor*] and [*grantee*]; *And also* a proviso or agreement enabling the

Grantor to appear, &c., in order that his life may be insured.

Not to go on the seas, &c.,

and to pay additional premium for going abroad, &c.

Grantor to insure premises against fire.

Power to repurchase.

1. AGREEMENT TO GRANT AN ANNUITY SECURED, &c., WITH OR WITHOUT A SURETY.

of lawful British money unto the said [*grantor*], at the time of executing the said securities. [AND *it is hereby further agreed*, that in case the said [*grantor*] should die before the said —— day of —— next, if the said securities, or one of them, should not have been previously executed, then these presents, so far as regards the granting of the said annuity, shall be void] (*h*). IN WITNESS, &c.

If grantor die before executing securities, annuity not to be granted.

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said [*grantor*] to repurchase the said annuity at any time [after the expiration of three years from the granting thereof], on giving six calendar months' notice for that purpose, and paying all arrears and expenses which shall have been incurred in consequence of the non-payment of any part of the said annuity."

As to agreements to grant annuities, &c.

(*h*) [J. Agreements to grant annuities are not very often entered into†, especially where the annuity is re-purchasable, and the transaction, therefore, is virtually intended to be a loan; the usual course is for the intended grantor to deliver to the intended grantee an abstract of his title; and if the title be approved, the business is proceeded in, and if not, it is abandoned, neither party being under the legal obligation of a contract. Indeed, it is now very common for vendors of *estates* to adopt a similar plan. After the terms of the sale have been arranged, the vendor's solicitor, without any previous written contract, delivers the abstract to the intended purchaser, who, having investigated the title, accepts it or not as he chooses, no legal liabilities having been contracted on either side. This mode of managing the transaction is generally better for the vendor, unless the title has been previously investigated by himself, (as to which *vide ante*, p. 104), since it places it out of the power of the purchaser to involve him in litigation on objections to the title, which the vendor may consider frivolous, and the removal of which may be attended with an expense greatly exceeding what he would, if unfettered by contract, be disposed to incur. The purchaser, in such a case, indeed, may reasonably say to the vendor, I will not be at the expense of examining your title, unless, if the title prove to be bad, you reimburse me the expenses. Such a stipulation, however, would raise the question, whether the title be good or not, and place the vendor in the dilemna from which it is his object to escape. Where a vendor sells by *auction*, he generally takes care to secure to himself a large deposit, and this gives him a considerable advantage in any disputes as to the title; for it often happens, that a vendor has a title sufficiently defective to prevent his venturing to force it upon a purchaser in a Court of equity, and yet not so defective that a Court of law would allow the purchaser to recover his deposit. Cases occur every day in practice, in which purchasers are advised not to hazard an action for

As to sales by auction.

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† As to enforcing the performance of such agreements, see *Pritchard* v. *Ovey*, 1 Jac. & Walk. 396.

the recovery of the deposit, though the title is manifestly not such as a Court of equity would pronounce to be free from doubt, and even where the vendor has actually failed in a suit for specific performance. In this and other respects purchasers at auctions would do well to exercise more vigilance than is commonly found on such occasions.[J.]

Agreements to grant annuities.

2. ASSIGNMENT, *by Indorsement, of an* ANNUITY, *secured by the* COVENANT *and* BOND *of the Grantor; subject to Re-purchase.*

2. ASSIGNMENT OF ANNUITY, COVENANT, AND BOND.

THIS INDENTURE, made the —— day of ——, &c.; BETWEEN the within-named [*grantee*], of the one part; and [*purchaser*], of &c., of the other part (*a*). WHEREAS the said [*purchaser*] hath agreed with the said [*grantee*] for the purchase of the within-mentioned annuity or yearly sum of £——, at the price of £——. AND WHEREAS a judgment was on or about the —— day of —— entered up on the within-mentioned warrant of attorney in her Majesty's Court of Queen's Bench at Westminster. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— of lawful British money, by the said [*purchaser*] to the said [*grantee*] in hand paid at or before the delivery of these presents, the receipt whereof he the said [*grantee*] doth hereby acknowledge, and from the same doth hereby acquit, release, and

Parties.

Recital of contract for purchase.

Recital of entering up judgment.

Testatum.

(*a*) It is generally prudent to make the original grantor a party to the assignment of an annuity, at least it should be ascertained that there has been no previous assignment, and that the amount of the annuity has not been reduced by a re-purchase of a part. This information may be generally obtained by application to the grantor. If the grantor be not a party to the assignment, he should have an immediate notice of it, which had better be in writing: this would prevent his pleading want of notice as an excuse for payment of the annuity to the assignor or a subsequent assignee. From an abundance of caution, some gentlemen recommend that the grantor be served with an attested copy of the assignment; however, a short notice in writing is sufficient. [*Vide infra*, Vol. 5, pp. 294, 458.]

Grantor should be a party to assignment, or have notice of it.

2. ASSIGNMENT OF ANNUITY, COVENANT, AND BOND.

discharge the said [*purchaser*], his executors, administrators, and assigns; *He* the said [*grantee*] (*a*), by these presents, *doth* bargain, sell, assign, transfer, and set over unto the said [*purchaser*], his executors, administrators, and assigns, THE within-mentioned annuity or yearly sum of £——;

Assignment of annuity,

and all powers, &c.,

and judgment,

AND all powers and remedies for recovering and enforcing the payment thereof; AND also the judgment so entered up upon the within-mentioned warrant of attorney; *And* all benefit and advantage of the said judgment;

and all sums, &c.

And all and every sum and sums of money to be secured or obtained by virtue thereof;

All the right, &c.

AND all the right, title, interest, claim, and demand whatsoever, as well legal as equitable, of him the said [*grantee*], in, to, and out of the said annuity or yearly sum of £——, judgment, and premises, and every of them, and every part and parcel thereof respectively.

Habendum of annuity.

TO HAVE, hold, receive, take, and enjoy the said annuity or yearly sum of £—— unto the said [*purchaser*], his executors, administrators, and assigns, from the —— day of —— now last past, for and during the life of the within-mentioned [*grantor*] or [*nominee*];

Subject to repurchase.

But subject to such power of repurchase as is given or reserved to the said [*grantor*] by the within-written indenture.

Habendum of judgment.

AND TO HAVE, hold, receive, take, and enjoy the judgment so entered up upon the said warrant of attorney, and all benefit and advantage thereof, unto the said [*purchaser*], his executors, administrators, and assigns, to and for his and their own absolute use and benefit.

Power of attorney to sue, &c., on judgment.

AND the said [*grantee*] doth hereby nominate and appoint the said [*purchaser*], his executors, administrators, and assigns, the lawful attorney and attornies of him the said [*grantee*] for him the said [*grantee*], and in his name or in the name or names of his executors or administrators, or any of them, to sue and prosecute any action, execution, or extent upon the said judgment; *And* to acknowledge, make, and give full satisfaction, release, or discharge for the same: AND the said [*grantee*] doth hereby for himself, his executors and administrators, agree to, confirm, and ratify all legal acts, matters, and things whatsoever to be done and accomplished by the said [*purchaser*], his executors, administrators, or

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An assignment of an annuity need not be inrolled.

(*b*) A memorial of an assignment of an annuity need not be inrolled, because the Annuity Act, 53 Geo. 3, c. 141, *ante*, p. 82, only extends to "every deed, bond, instrument, or other assurance, whereby any annuity or rent-charge shall be *granted*."

assigns, in or about the said judgment and premises. And the said [*grantee*] for himself, his heirs, executors, and administrators doth hereby covenant and agree with the said [*purchaser*], his executors, administrators, and assigns, that the said [*grantee*] hath not made, done, or committed, or knowingly permitted or suffered any act, deed, matter, or thing whatsoever, by means whereof the said annuity or yearly sum of £——, or any part thereof, are, is, shall, or may be charged, impeached, released, or incumbered, or in anywise affected in title, interest, or otherwise howsoever; *Or* by means whereof the recovery and receipt by the said [*purchaser*], his executors, administrators, or assigns, thereof, and of all future payments thereof, or of any part thereof respectively, can be hindered or delayed: And moreover that he the said [*grantee*], his executors and administrators, and every person having or lawfully claiming, or who shall or may have or lawfully claim, any right, title, or interest, either at law or in equity, in, to, or out of the annuity, judgment, and premises hereby assigned or intended so to be, or in, to, or out of any part thereof, by, from, or under, or in trust for them, or any of them, will and shall, from time to time, and at all times hereafter, at the request, costs, and charges of the said [*purchaser*], his executors, administrators, or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further acts, deeds, assignments, and assurances in the law for the more perfectly and absolutely assigning the said annuity, judgment, and premises to the use of the said [*purchaser*], his executors, administrators, and assigns: *And* for the better enabling him and them to recover and receive the said annuity and all future payments thereof, and every part thereof respectively; *As* by the said [*purchaser*], his executors, administrators, or assigns, or as by his, their, or any of their counsel in the law shall be reasonably devised or advised and required: And further, that he the said [*grantee*], his executors or administrators, will not nor shall release, vacate, or discharge the said judgment: but will and shall, upon the request and at the costs and charges in the law of the said [*purchaser*], his executors, administrators, or assigns, do and execute all such further acts, matters, and things whatsoever, for better assigning the said judgment to the said [*purchaser*], his executors, administrators, and assigns; and for better enabling him and them to receive and enjoy, to

2. Assignment of annuity, covenant, and bond.

Covenant by vendor, that he has not released or incumbered.

For further assurance.

And that vendor will do further acts to secure benefit of judgment to purchaser.

2. ASSIGNMENT OF ANNUITY, COVENANT, AND BOND.

his and their own use and benefit, all sum and sums of money, lands, tenements, and other benefit and advantage to be obtained by, upon, or by virtue of any extent or execution upon the said judgment, *As* by the said [*purchaser*], his executors, administrators, or assigns, or as by his, their, or any of their counsel in the law shall be reasonably devised or advised and required. AND THE SAID [*purchaser*] for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*grantee*], his executors and administrators, that he the said [*purchaser*], his heirs, executors, and administrators, or some or one of them, will or shall from time to time, and at all times hereafter, pay unto, and in the meantime save, defend, keep harmless and indemnified, the said [*grantee*], his heirs, executors, and administrators, and his and their lands, tenements, goods, chattels, and effects, from and against all costs, charges, damages, and expenses whatsoever which can, shall, or may be sustained or incurred, or which may become payable for or by reason or in consequence of any action or suit, or actions or suits which shall or may be brought or prosecuted in the name or names of the said [*grantee*], his executors or administrators, or any of them, under or by virtue of any power or authority hereby given, or in pursuance hereof to be given to the said [*purchaser*], his executors, administrators, or assigns; so as the same do not arise or accrue through the collusion or act of the said [*grantee*], his executors or administrators. IN WITNESS &c.

Covenant by purchaser to indemnify vendor from costs, in consequence of his name being used.

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3. ASSIGNMENT OF ANNUITY, BOND, JUDGMENT, TERM, POLICY OF INSURANCE, &c.

3. ASSIGNMENT *of an* ANNUITY, *and a* BOND WARRANT OF ATTORNEY, *and* JUDGMENT, *either with or without an* ASSIGNMENT *of a* POLICY OF INSURANCE; *and* ASSIGNMENT *of a* TERM *for securing the Annuity to a new Trustee, in which the Grantor joins.*

Parties.

THIS INDENTURE, made BETWEEN [*grantee of annuity*], of &c., of the first part; [*old trustee of term*], of &c., of the second part; [*grantor* (*a*) *of annuity*], of &c., of the third

(*a*) *Vide ante*, p. 123 (*a*).

part; [*purchaser*], of &c., of the fourth part; [*new trustee of term*], of &c., of the fifth part. WHEREAS, by an indenture dated the —— day of ——, 18—, and expressed to be made between the said [*grantor*] of the first part; the said [*grantee*] of the second part: and the said [*old trustee*] of the third part; *In consideration* of the sum of £——, paid by [[*agent*], of &c., as agent (*b*) for] the said [*grantee*] to the said [*grantor*], being the same sum as is mentioned in the condition of the bond hereinafter mentioned; the said [*grantor*] did grant unto the said [*grantee*], his executors, administrators, and assigns, *One* clear annuity or yearly rentcharge of £——, for the term of ninety-nine years, if the said [*grantor*] should so long live, to be issuing and payable out of all the manors, &c., thereinafter mentioned to be thereby demised, and every part thereof; and to be paid by four equal quarterly payments, on the —— day of ——, &c. in every year, without any deduction (except the tax or duty on income or property); and a proportional part of the said annuity of £—— up to and inclusive of the day of the decease of the said [*grantor*]: *And* by the said indenture, the said [*grantor*] did grant unto the said [*grantee*], his executors, administrators, and assigns, the usual powers and remedies of distress and entry, and perception of rents and profits, in case the said annuity, or any part thereof, should be in arrear: *And* did covenant with the said [*grantee*], his executors, administrators, and assigns, for the regular payment of the said annuity: *And* also did demise unto the said [*old trustee*], his executors, administrators, and assigns, the manors, &c., therein particularly mentioned and described, situate, &c., with their appurtenances: *To hold* the same unto the said [*old trustee*], his executors, administrators, and assigns, from the day next before the day of the date of the said indenture, for the term of ninety-nine years, if the said [*grantor*] should so long live, *Upon* and for the trusts therein declared, for better securing the payment of the said annuity: *And* in the said indenture is contained a proviso enabling the said [*grantor*] to repurchase the said annuity upon the terms therein mentioned (*c*). AND WHERE-

3. ASSIGNMENT OF ANNUITY, BOND, JUDGMENT, TERM, POLICY OF INSURANCE, &c.

Recitals: of grant of annuity for 99 years, if grantor so long live.

With usual powers of distress and entry.

Covenant for payment.

Demise for better securing annuity.

Proviso for repurchasing annuity.

Reference to bond.

(*b*) This is not necessary under the new annuity act.

(*c*) If there are covenants respecting insurance, say,

POLICY OF INSURANCE.

Recital of cove-

" *And* by the said indenture the said [*grantor*] further cove-

3. ASSIGNMENT OF ANNUITY, BOND, JUDGMENT, TERM, POLICY OF INSURANCE, &c.

Reference to judgment.

Recital of inrolment.

Recital of arrears due.

Recital of contract for purchase.

AS the said annuity is further secured by the bond of the said [*grantor*], in the penal sum of £——, bearing even date with the said indenture, and conditioned to be void on the due and regular payment of the said annuity: *and* by a judgment confessed by virtue of a warrant of attorney from the said [*grantor*] for that purpose. AND WHEREAS the said several securities have been duly memorialized and inrolled in the High Court of Chancery. AND WHEREAS there is now due and owing for the arrears of the said annuity, up to the day of the date of these presents, the sum of £——, and no more, as the said [*grantor*] and [*grantee*] do hereby respectively acknowledge. AND WHEREAS the said [*purchaser*] hath contracted with the said [*grantee*] for the absolute purchase of the said annuity, to-

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Covenant of grantor to appear, &c., in order that his life may be insured.

And to give notice of leaving the kingdom, &c.

And to pay additional premium in consequence thereof.

Recital of effecting insurance on grantor's life.

nanted with the said [*grantee*], his executors, administrators, and assigns, that he would from time to time, at his own expense, when required, attend personally at any of the offices of insurance in London or Westminster, or send such vouchers of his residence and state of health as any such offices should require, in order that his life might be insured and kept insured; *And* upon his leaving, or intending to leave Great Britain, or doing any other act whereby an increased premium would become payable on any policy on which his life might be insured, give notice thereof in writing to the said [*grantee*], his executors, administrators, and assigns, one calendar month at least before doing any such act, in order to prevent any such policy from being avoidable; And would, in case of his doing any such act, or giving notice of his intention to do the same, pay unto the said [*grantee*], his executors, administrators, and assigns, the additional premium which might be demanded at any of the said insurance offices, for insuring any sum not exceeding £—— on the life of the said [*grantor*], in consequence thereof. AND WHEREAS the said [*grantee*] hath effected with the Albion Insurance Company an insurance on the life of the said [*grantor*], for the sum of £——: *And* that sum is, for the annual premium of £——, assured to be paid to the said [*grantee*], his executors, administrators, and assigns, on the decease of the said [*grantor*], by a policy of insurance under the hands and seals of some of the directors of that company, bearing date the —— day of ——, 18.

gether with all the arrears thereof, at or for the price or sum of £——, *Subject* to the right of the said [*grantor*] to repurchase the same as aforesaid. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of £——, of lawful British money, at the delivery of these presents to the said [*grantee*] paid by the said [*purchaser*], the receipt whereof he the said [*grantee*] doth hereby acknowledge, and from the same doth acquit, release, and for ever discharge the said [*purchaser*], his executors, administrators, and assigns, *he* the said [*grantee*] by these presents *doth* bargain, sell, and assign, unto the said [*purchaser*], his executors, administrators, and assigns, ALL THAT the said annuity or yearly rent-charge of £——, secured or intended to be secured by the said indenture, bond, warrant of attorney, and judgment respectively; *And* all arrears and future payments thereof; *Together* with the said indenture, bond, warrant of attorney, and judgment (*d*), and all and every sum and sums of money to be had or received by virtue thereof respectively; and the full benefit and advantage of all the securities whatsoever made and given for securing the payment of the said annuity, monies, and premises. AND all the right, title, interest, trust, property, claim, and demand whatsoever, both at law and in equity, or otherwise howsoever, of him the said [*grantee*], of, in, to, or out of the same premises, and every or any part thereof. TO HAVE, hold, receive, take, and enjoy the said annuity, and premises, and every part thereof, unto the said [*purchaser*], his executors, administrators, and assigns, henceforth, to and for his and their own use and benefit absolutely, [in the same and as full, ample, and beneficial a manner in all respects, and to all intents and purposes, as the said [*grantee*], his executors or administrators, could or might have done in case these presents had not been made.] AND *he* the said [*grantee*] *doth* nominate and appoint the said [*purchaser*], his executors, administrators, and assigns, his true and lawful attorney and attornies, irrevocable, in the name of him the said [*grantee*], his executors or administrators, to demand, sue for, recover, and receive the said annuity or yearly rent-charge of £——

3. ASSIGNMENT OF ANNUITY, BOND, JUDGMENT, TERM, POLICY OF INSURANCE, &c.

Subject to repurchase.

Testatum.

Assignment of annuity,

and all arrears, with the securities,

and benefit thereof.

All the estate.

Habendum.

Power of attorney to receive and recover annuity.

(*d*) If there be a policy of insurance, add,
"policy of insurance, additional premium."

POLICY OF INSURANCE.

3. ASSIGNMENT OF ANNUITY, BOND, JUDGMENT, TERM, POLICY OF INSURANCE, &c.

and the arrears and future payments thereof, and all and every or any other sum or sums of money due or to become due, under the said securities, or any of them, and every or any part or parts thereof respectively; *And* in default of the payment thereof, or of any part thereof respectively, to bring and prosecute any action or actions, suit or suits; or to use such other ways and means for enforcing the payment of the same respectively, as to him or them shall seem meet: *And* upon the receipt of that or of any part or parts thereof respectively, to sign, seal, deliver, and give one or more receipt or receipts, or other discharge or discharges for the same; *And also* upon the expiration or repurchase of the said annuity, or upon any other occasion, to release the said judgment, or to enter satisfaction for the same upon the record thereof; *Or* to do any other acts or things for avoiding or releasing the said annuity and all or any of the said securities: *And* for all or any of the purposes aforesaid to use the name or names of the said [*grantee*], his executors or administrators; *And* from time to time to nominate and appoint one or more attorney or attornies, under him the said [*purchaser*], his executors, administrators, or assigns; and to revoke, alter, and vary such nomination and appointment at his and their pleasure: *And generally* to do and perform all other acts, deeds, matters, and things, in and about the premises, as fully and effectually as he the said [*grantee*], his executors or administrators, might or could do if personally present and acting therein; he the said [*grantee*] hereby ratifying and confirming, and agreeing to ratify and confirm, all that the said [*purchaser*], his executors, administrators, or assigns, or his or their substitute or substitutes, shall lawfully do or cause to be done, in or about the premises by virtue of these presents. PROVIDED ALWAYS, and the said [*purchaser*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantee*], his executors and administrators, That he the said [*purchaser*], his heirs, executors, administrators, or assigns, will or shall from time to time, and at all times hereafter, pay unto, and in the meantime save harmless and keep indemnified the said [*grantee*], his executors and administrators, of, from, and against all costs, charges, and expenses, which he or they shall or may be put unto, pay, or sustain, by reason, or on account of the name or names of the said [*grantee*], his executors or administrators, being used in any

Upon the purchase to release judgment, &c.

Covenant by purchaser to indemnify vendor in consequence of his name being used.

action, suit, or other proceeding which may be brought, commenced, or prosecuted, by virtue of the power hereinbefore contained. AND THE SAID [*grantee*] doth hereby for himself, his heirs, executors, and administrators, covenant with the said [*purchaser*], his executors, administrators, and assigns (*y*), That the said annuity or yearly rentcharge of £—— is now good, valid, and subsisting, for the said term of ninety-nine years, determinable as aforesaid: And that the said securities are still in force: AND that he the said [*grantee*], now hath in himself good right, full power, and lawful and absolute authority, to grant or assign the said annuity and premises unto the said [*purchaser*], his executors, administrators, and assigns, according to the true intent and meaning of these presents: AND that he the said [*grantee*], his executors or administrators, will not, nor shall, without the consent in writing of the said [*purchaser*], his executors, administrators, or assigns, or the order or decree of some court of law or equity, alter, revoke, or annul all or any of the powers or authorities hereinbefore contained and given to the said [*purchaser*], his executors, administrators, and assigns: AND that it shall be lawful for the said [*purchaser*], his executors, administrators, and assigns, to receive and take the said annuity and other the monies hereby intended to be assigned, or otherwise assured, when and as the same shall become due and payable, without any let, suit, or interruption whatsoever, of, from, or by him the said [*grantee*], his executors or administrators, or any other person or persons whomsoever; *And* that free and clear of and from all charges and incumbrances whatsoever: AND moreover, that he the said [*grantee*], his executors and administrators, and all persons rightfully claiming and to claim any estate, right, title, charge, or interest, in or to the said premises, will and shall from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said [*purchaser*], his executors or administrators, make, do, give, and execute, All such further acts, deeds, assignments, powers, authorities, and other assurances whatsoever, for more effectually assigning or assuring unto or vesting in the said [*purchaser*], his executors, administrators, and assigns, the annuity and monies hereby intended

3. ASSIGNMENT OF ANNUITY, BOND, JUDGMENT, TERM, POLICY OF INSURANCE, &c.

Covenants by vendor, that annuity and securities are subsisting and in force;

For title.

Not to revoke powers.

For peaceable enjoyment.

Free from incumbrances

And for further assurance.

(*y*) [It will be observed, that these covenants, contrary to the usual practice between vendor and vendee, are absolute. (*Vide* Form of *limited* covenants, *infra*, p. 143).]

3. ASSIGNMENT OF ANNUITY, BOND, JUDGMENT, TERM, POLICY OF INSURANCE.

to be assigned or otherwise assured, and the securities for the same respectively, and for authorising or empowering him or them to receive and obtain payment thereof, *As* by the said [*purchaser*], his executors, administrators, or assigns, or his or their counsel in the law, shall be devised or advised and required.

Further *testatum.*

AND THIS INDENTURE ALSO WITNESSETH (*z*) that in consideration of the premises, and of the sum of 10*s.* to the said [*trustee*] paid by the said [*new trustee*], at or before the delivery of these presents, the receipt whereof is hereby acknowledged, *he* the said [*trustee*],

Assignment by old trustee, by direction of vendor and purchaser, to new trustee of parcels.

at the request and by the direction of the said [*grantee*], and upon the nomination and appointment of the said [*purchaser*], by these presents *doth* bargain, sell, assign, transfer, and set over unto the said [*new trustee*], his executors, administrators, and assigns, ALL and singular the hereditaments and premises which in and by the above recited indenture were demised by the said [*grantor*] to the said [*trustee*], for the term of ninety-nine years as aforesaid, or were expressed and intended so to be, with the appurtenances: AND all the estate, right, title, interest, term and

All the estate.

terms for years, property, claim, and demand whatsoever, of him the said [*old trustee*], of, in, to, or out of the same

Habendum to new trustee for residue of term.

hereditaments and premises, and every or any part thereof. To HAVE AND TO HOLD the said hereditaments, and all and singular other the premises lastly hereinbefore assigned or expressed and intended so to be, with their appurtenances, unto the said [*new trustee*], his executors, administrators, and assigns, henceforth, for and during all the residue and remainder now to come and unexpired of the said term of ninety-nine years, determinable as aforesaid, and for all other the estate, term, and interest of the said [*trustee*] therein;

Upon trust for securing annuity to purchaser.

NEVERTHELESS upon and for the trusts, intents, and purposes, in and by the said indenture expressed or declared of or concerning the same; *But so nevertheless,* that all the benefit and advantage of the same trusts by the same indenture declared or intended in favour of the said [*grantee*], his executors, administrators, and assigns, shall belong to and be received and enjoyed by the said [*purchaser*], his executors, administrators, and assigns. (*Add covenant by the old trustee that he has not incumbered, ut infra,* p. 140). IN WITNESS, &c.

OLD TRUSTEE CONTINUED.

(*z*) If the old trustee be continued, *vide infra,* p. 151.

4. ASSIGNMENT *of an* ANNUITY *for the Lives of two Nominees, (secured by* BOND *and* WARRANT OF ATTORNEY *upon which* JUDGMENT *has been entered, and* COVENANT *to surrender* COPYHOLDS; *subject to repurchase), either by the Grantee, or by his* EXECUTORS, *or* ADMINISTRATORS, *or by specific or residuary* LEGATEES, *with the* ASSENT *of the Executor, or by the* NEXT *of* KIN, *with the Assent of the Administrator; and either where the Copyholds have not been previously surrendered, or where they have been previously surrendered, and the Grantee admitted;* DECLARATION OF TRUST *by the Purchaser.*

4. ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

COPYHOLDS TO BE SURRENDERED TO PURCHASER.

THIS INDENTURE, made the &c., BETWEEN [*grantee*], of &c., of the one part (*a*), and [*purchaser*], of &c., of the other part. WHEREAS [*grantor*], of &c, formerly called [*former name*] only, by his bond or obligation in writing dated on or about the —— day of ——, became bound to the said [*grantee*], his executors, administrators, and assigns, in the penal sum of £——; *With a condition* thereunder written for making the same void, if the said [*grantor, present name in this place, and also when mentioned afterwards*], his heirs, executors, or administrators, should pay unto the said [*grantee*], his executors, administrators, or assigns, for and during the natural lives of [*nominee*], of &c., and [*other nominee*], of &c., and the life of the survivor of them, *One* annuity or yearly sum of £——, free from taxes, and clear of all deductions whatsoever, on four

Parties.

Recital of bond for securing annuity.

Condition.

Lives.

Annuity.

Days of payment.

(*a*) If the sale be made by the executor or administrator of the grantee, and the surrender of the copyhold has not been made by the grantor, the executor or administrator should be the first party, and the purchaser the other party; but if in that case the surrender has been made, the heir of the grantee should be the second party, and the purchaser the third party. If the sale be made by the persons beneficially interested in the purchase-money, they should be the first parties, the executor or administrator the second party, the heir, if he be a necessary party, the third party, and the purchaser the fourth party.

BY EXECUTOR ALONE.

HEIR OF GRANTEE A PARTY.

BY PERSONS BENEFICIALLY INTERESTED, AND EXECUTOR, &c.

4. ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

days or times in the year; that is to say, &c., in every year, by equal portions; the first payment, &c., with the whole or a just proportion of the last quarterly payment, in case of the death of the survivor of them the said [*nominees*], on or previously to any quarterly day of payment as therein mentioned.

Recital of warrant of attorney to confess judgment upon bond.

AND WHEREAS by a deed poll, or warrant of attorney, under the hand and seal of the said [*grantor*], of even date with the said bond or obligation, the said [*grantor*] authorized [A. B.] and [C. D.], attornies of her Majesty's Court of Common Pleas at Westminster, or either of them, or any other attorney of the same court, to confess a judgment against him the said [*grantor*], in the said Court of Common Pleas, at the suit of the said [*grantee*], in an action of debt upon the said bond, for the sum of £——and costs of suit.

Recital of covenant to surrender copyholds of inheritance.

AND WHEREAS by an indenture also of even date with the said bond or obligation, and expressed to be made between the said [*grantor*] of the one part, and the said [*grantee*] of the other part, *After* taking notice therein (amongst other things) of the said bond and warrant of attorney, *It is witnessed* that in consideration of the sum of £——, the said [*grantor*] did for himself, his heirs, executors, and administrators, covenant with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*] would immediately after the execution of the said indenture, at his own costs, surrender into the hands of the lord or lords, lady or ladies, of the manor of ——, in the county of ——, for the

Parcels.

time being, according to the custom of the said manor, *All* &c. with their rights, members, privileges and appurtenances; *And* all other the lands, tenements, and hereditaments, of him the said [*grantor*], holden of the said manor by copy of

Use.

court roll, *To the use* of the said [*grantee*], his heirs and as-

Condition.

signs, *Upon the condition* that if the said [*grantor*], his heirs, executors, or administrators, should well and truly pay the said annuity or yearly sum of £——, in manner and form in the said bond mentioned and appointed for payment

Trust.

thereof, then the said surrender should be void: and *Upon the trusts* for the perception of the rents, issues, and profits, or for the sale or mortgage of the said hereditaments and premises, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements thereinafter mentioned, expressed, and declared, for better securing the payment of the said annuity unto the said [*grantee*], his executors, administrators, and

assigns; and subject thereto, *In trust* for the said [*grantor*], his heirs and assigns: And in which indenture is contained [a covenant by the said [*grantor*] for payment of the said annuity, and such proportional part as aforesaid, at the days or times and in manner and form aforesaid; *And also* covenants for the title, peaceable enjoyment, and further assurance of the said copyhold premises; *And also* a proviso, that when and as often as the said annuity should be behind and unpaid by the space of twenty-one days, it should be lawful for the said [*grantee*], his executors, administrators, and assigns, to sue out such execution or executions upon or by virtue of the said judgment, for the recovery of the arrears of the said annuity, and all costs and charges which the said [*grantee*], his executors, administrators, or assigns, should bear, pay, sustain, or be put unto by reason of the non-payment thereof; *And* that it should not be necessary for the said [*grantee*], his executors, administrators, or assigns, to revive or cause to be revived the said judgment, or to do any thing to keep the same on foot, notwithstanding the same should have been entered on record for the space of one year or upwards, and notwithstanding any rule or practice of the court in which the said judgment should be entered on record to the contrary; *And*] a covenant by the said [*grantee*] that in case the said [*grantor*], his heirs, executors, administrators, or assigns, should be desirous of repurchasing the said annuity, and of such his desire should give unto the said [*grantee*], his executors, administrators, or assigns, three calendar months' notice in writing, he the said [*grantee*], his heirs, executors, administrators, or assigns, would or should, at the end of the said three months, on receiving all sum and sums of money due for the arrears of the said annuity, together with a proportional part thereof from the last day of payment thereof preceding such repurchase, up to the time of repurchasing the same as aforesaid, and all costs and charges, if any, incurred in consequence of default in payment of the said annuity, accept and take the sum of £—— in full for the purchase of the said annuity; *And* would or should, at the costs of the said [*grantor*], his heirs, executors, administrators, or assigns, deliver up the said bond to be cancelled, and acknowledge or cause to be acknowledged satisfaction on the record of the said judgment, and surrender the said copyhold premises, or so much

4. ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

Recital of covenant for payment of annuity.

Covenant for title, &c.

Power for grantee, on default of payment, to sue out execution of judgment.

That grantee need not revive judgment.

Power of repurchase.

4. ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

thereof as should not have been disposed of under the trusts for sale hereinbefore referred to, to the use of the said [*grantor*], his heirs and assigns, or as he or they should direct: AND WHEREAS a judgment was duly entered up in the said Court of Common Pleas against the said [*grantor*], in —— term, in the year ——, at the suit of the said [*grantee*], upon the said bond, for the said sum of £—— and costs of suit, in pursuance of the said warrant of attorney: BUT (*c*) no surrender of the said copyhold premises, or any part thereof, hath been made to the said [*grantee*] by the said [*grantor*] (*d*). AND WHEREAS the said [*pur-*

Recital that judgment had been entered up.

But that no surrender of copyhold premises had been made.

AFTER SURRENDER AND ADMISSION.

(*c*) If the surrender by the grantor and the admission of the grantee have been already made, say,

Recital of surrender.

"AND WHEREAS, at a court baron held in and for the said manor of ——, on the —— day of ——, the said [*grantor*] surrendered into the hands of the lord of the said manor, by the rod, according to the custom thereof, the said hereditaments and premises, with the rights, members, privileges, and appurtenances, *To the use* of the said [*grantee*], his heirs and assigns, *Upon* the same or a like condition to that hereinbefore recited, and *Upon the trusts* and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements, mentioned, expressed, and declared of and concerning the same, in and by the said indenture of the —— day of ——: AT WHICH court the said [*grantee*] was admitted tenant to the said hereditaments and premises, *To hold* to him, his heirs and assigns, according to the tenor and true intent and meaning of the said surrender, by the rod, at the will of the lord, according to the custom of the said manor, *By* the rents, customs, and services therefore due and of right accustomed."

on condition; and upon trusts.

Admission.

SALE BY EXECUTOR ALONE.

(*d*) If the grantee be dead, and the sale be made by his executor, without any other person joining in the conveyance, recite, according to circumstances, to the following effect;

Recital of grantee's will, death, and probate, and that one executor declined to act.

"AND WHEREAS the said [*grantee*], by his last will bearing date, &c., did appoint the said [*executor*] and [*other executor*], of &c., executors of his said will; and afterwards departed this life, without altering or revoking the same; and upon his decease the said [*executor*], only, proved the same in the Prerogative Court of the Archbishop of Canter-

chaser], hath contracted with the said (*e*) [*grantee*] for the absolute purchase of the said annuity or yearly sum of

4. ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

(*e*) If by executor, &c.
" [*executor*] or [*administrator*] or [*vendors*],"

bury, and took upon himself the execution thereof; the said [*other executor*] having declined to act therein."

BY EXECUTOR, &c.

And, instead of the *grantee's* name, substitute the *executor's* in the remainder of the draft, when not otherwise mentioned.

In case of a specific bequest, say,

SALE BY PERSONS BENEFICIALLY INTERESTED.

"AND the said testator by his said will gave and bequeathed the said annuity or yearly sum of £——, and all the arrears thereof, and all the securities for the payment thereof; [and the benefit of all policies of insurance which he had effected or might thereafter effect on the life of the said [*nominees*] or either of them], and all the benefit and advantage thereof, unto the said [*specific legatee*], his (*or*, unto the said [*specific legatees*], their) executors, administrators, and assigns, [as tenants in common]."

Recital of specific bequest.

In case of a residuary bequest, say,

Recital of residuary bequest.

"AND the said [*testator*], by his said will, after making several [devises and] bequests, not comprising the said annuity or yearly sum of £——, gave and bequeathed all the rest, residue, and remainder of his [real and] personal estate and effects, unto and equally between the said [*vendors*], their [heirs], executors, administrators, and assigns."

If the residuary legatee and executor be the same person, say,

Recital that executor is residuary legatee.

"AND the said [*vendor*] is the residuary legatee of the same last will and testament, and is thereby entitled to the said annuity or yearly sum of £——, for the life of the said [*grantor*], and the several securities for the same."

Recital of executor's assent to bequest.

"AND WHEREAS the said [*executor*] hath assented to the bequest of the said annuity, securities, and policies so made by the said [*testator*] to the said [*vendors*] as aforesaid, as he the said [*executor*] doth hereby admit, acknowledge, and declare."

SALE BY ADMINISTRATOR ALONE.

If the sale be made by the administrator alone on an intestacy, substitute his name for the grantee's in the remainder of the draft, when not otherwise mentioned, and say,

Recital of grantee's death and intestacy.

"AND WHEREAS the said [*grantee*] died intestate on or about the —— day of ——, and administration of the

4. ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

£——, and of all arrears now due and to grow due for the same, and also the said bond, judgment, and all other securities for the same, and all benefit and advantage thereof respectively, for the price of £—— (*f*); AND upon the treaty for the said purchase, it was agreed that the said copyhold premises with their appurtenances should be surrendered by the said (*g*) [*grantor*] to the use of the said [*purchaser*], his heirs and assigns, as hereinafter mentioned. NOW THIS INDENTURE WITNESSETH,

And that copyhold premises should be surrendered.

Testatum.

(*f*) In case of a bequest, say,

Recital of executor's consent to join in assignment.

"AND at the request and for the satisfaction of the said [*purchaser*], and for the purpose of affording evidence of his assent to the said bequest, he the said [*executor*] hath agreed to join in the assignment or other assurance of the said annuity and premises hereby intended to be made."

When the administrator is not beneficially interested, say,

Recital of administrator's consent to join in assignment.

"AND the said [*administrator*], at the request of the said [*purchaser*], hath agreed to join in the assignment or other assurance of the said annuity and premises, hereby intended to be made, for the purpose of conveying the legal interest thereof, which is vested in him as the administrator of the said intestate."

SURRENDER BY GRANTEE.

(*g*) If the surrender and admission have been already perfected, and the grantee be alive, substitute,

"[*grantee*],"

BY HIS HEIR.

Or if the grantor be dead, say,

"[*heir*] as the customary heir of the said [*grantee*],"

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goods, chattels, and credits of the said [*grantee*] was, on or about the —— day of ——, granted to the said [*administrator*] by the Court of ——."

SALE BY PERSONS BENEFICIALLY INTERESTED.

If the sale be made by the next of kin on an intestacy, add,

Recital of being next of kin.

"AND WHEREAS the said [*vendors*] are the children (*or* brothers and sisters, (*or*) first cousins, *vel cetera*), and only persons next of kin to the said [*grantee*], and as such [they the said [*vendors*], in their own right, and in right of their said wives] are beneficially entitled to the said annuity or yearly sum of £——, and the several securities for the same."

4. ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

that in pursuance of the said agreement, and in consideration of the sum of £—— of lawful British money, to the said (*h*) [*grantee*] paid by the said [*purchaser*], at or before delivery of these presents, the receipt whereof he the said [*grantee*] doth hereby acknowledge, and from the same and every part thereof, doth acquit, release, and discharge the said [*purchaser*], his executors, administrators, and assigns, and every of them for ever by these presents, *he* the said [*grantee*], by these presents, doth bargain, sell, assign, transfer, and set over, unto the said [*purchaser*], his executors, administrators, and assigns, ALL THAT the said annuity or clear yearly sum of £——, payable during the lives of the said [*nominees*] and the life of the survivor of them as aforesaid, and all arrears now due and henceforth to grow due for the same, together with such proportional part thereof as aforesaid; AND ALSO the said bond, warrant of attorney, judgment, and indenture, so respectively made, executed, and entered up for securing the payment of the same annuity as aforesaid; AND ALSO all and every the trusts, powers, remedies, covenants, and agreements, mentioned and contained in the same indenture for securing and enforcing the payment thereof; AND all other the securities for the same; AND all the benefit and advantage

Consideration.

Assignment of annuity.

Bond, warrant of attorney, judgment, and indenture.

All covenants, &c.

All other securities, &c.

BY PERSONS BENEFICIALLY INTERESTED.

(*h*) If the sale be made by the persons beneficially interested, say, "[*vendors*] paid by the said [*purchaser*] at or before the delivery of these presents, the receipt whereof they the said [*vendors*] (*if more than two*, and every) and each of them do and doth hereby acknowledge, and from the same and every part thereof, do and each of them doth acquit, release, and discharge the said [*purchaser*], his executors, administrators, and assigns, and every of them for ever by these presents; *And also* in consideration of the sum of five shillings of lawful British money to him the said [*executor or administrator*] paid by the said [*purchaser*], at or before the delivery of these presents, the receipt whereof is hereby acknowledged, *They* the said [*vendors*] by these presents *do* and each of them *doth* bargain, sell, assign, transfer, and set over; *And* the said [*executor or administrator*], at the request and by the direction of the said [*vendors*], by these presents *doth* bargain, sell, assign, transfer, and set over, ratify and confirm, unto &c." *ut supra*.

Nominal consideration to executor, &c.

Assignment by vendors,

and confirmation of executor, &c.

4. ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

thereof respectively: AND ALSO all the right, title, interest, trust, property, claim, and demand whatsoever, both at law and in equity, of (*i*) him the said [*grantee*], in, to, and out of the said annuity and premises, and every of them, and every part thereof: TO HAVE, hold, receive, take, and enjoy the said annuity and premises, and every part thereof, and all the benefit and advantages thereof respectively, unto the said [*purchaser*], his executors, administrators, and assigns, to and for his and their own use and benefit absolutely, in as full, ample, and beneficial a manner, in all respects, and to all intents and purposes, as the said [*grantee*], his executors or administrators, could or might have done in case these presents had not been made; *Subject nevertheless* to such power of repurchasing the said annuity as the said [*grantor*] is entitled to, under or by virtue of the said indenture, as aforesaid: AND (*Power of attorney* (*k*), *and Covenant by purchaser to indemnify vendor*, &c. *ut ante*, p. 130 (*l*)). AND (*if the*

All the right, &c. *Habendum.*

Subject to grantor's right to repurchase. Power of attorney to receive and recover annuity.

LEGATEES, &c.

(*i*) If by legatees, &c., say,

"them the said [*vendors*] and [*executor or administrator*], and each of them."

PERSONS BENEFICIALLY INTERESTED.

(*k*) If by persons beneficially interested, say,

"*They* the said [*vendors*] and [*executor or administrator*], and every of them by these presents *do*, and each of them *doth* make, constitute, and appoint the said [*purchaser*], his executors, administrators, and assigns, the true and lawful attorney and attornies of them, each and every of them the said [*vendors*] and [*executor or administrator*], and the executors or administrators of them, each and every of them, in the names or name of them, each or every of them, or in the name or names of the said [*purchaser*], his executors, administrators, or assigns, and in either case," &c.

Covenants by executor or administrator, not beneficially interested in the purchase-money, that he has not incumbered.

(*l*) If the sale be made by an executor or administrator, who is not beneficially interested in the purchase-money, say,

"AND THE SAID [*executor or administrator*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*purchaser*], his executors, administrators, and assigns, that he the said [*executor or administrator*] hath not at any time or times heretofore made, done, or committed, or knowingly suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or wherewith, or by reason or means whereof the said annuity,

sale be made by the grantee himself, see form of the covenants, 4. ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

or the arrears thereof, or such proportional part thereof as aforesaid, or any of the securities for the same, is, shall, can, or may be impeached, charged, incumbered, released, discharged, determined, affected, or rendered void or voidable: AND that he the said [*executor or administrator*], his executors or administrators, will not nor shall at any time or times hereafter revoke or make void any of the powers or authorities hereinbefore contained for the recovery of the same annuity, and the arrears thereof, and such proportional part thereof as aforesaid; but will and shall permit and suffer his and their name and names to be made use of in any action, suit, or other proceeding to be brought, commenced, instituted, or carried on for that purpose; he the said [*executor or administrator*], his executors and administrators, being indemnified from all loss, costs, charges, damages, and expenses thereto, or to be occasioned thereby."

And not to revoke powers, but to suffer name to be used, being indemnified from costs.

And omit the other covenants; but if the executor or administrator be solely interested in the purchase-money, the other covenants should be inserted; in which case the covenants for title may immediately succeed without a fresh lien part, thus,

Covenants by executor or administrator solely interested.

"AND ALSO *That* notwithstanding &c." *ut post*, p. 143.

If the persons beneficially interested in the purchase-money join with the executor or administrator, the covenants should be—

"AND each of them the said [*vendors*] and [*executor or administrator*], severally, separate and apart from the other and others of them, doth hereby for himself and herself respectively, and his and her respective heirs, executors, and administrators; and as to, for, and concerning only the acts, deeds, and defaults of himself and herself respectively, and his and her respective executors and administrators, covenant and agree with the said [*purchaser*], his executors, administrators, and assigns; *that* they the said [*vendors*], and [*executor or administrator*], have not at any time or times heretofore made, &c., *ut ante*, p. 140: AND that they, the said [*vendors*] and [*executor or administrator*], their executors or administrators, will not nor shall at any time or times hereafter revoke or make void the power or authority hereinbefore contained for the recovery of the same annuity, and the arrears thereof, and such proportional part thereof, as aforesaid; BUT will and shall permit and suffer their and his

Covenants by persons beneficially interested, and executor or administrator, severally, separate and apart.

That they have not incumbered.

And not to revoke power hereby given, being indemnified from costs in consequence of their names being used.

4. ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

ante, p. 131) (*m*). AND the said (*n*) [*grantee*] doth hereby order,

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(*m*) If the surrender and admission have been made, say,

SURRENDER MADE.

"AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance of the said agreement, and for the considerations aforesaid, he the said [*grantee*],"

Covenant by grantee to surrender to purchaser.

If the surrender and admission have been made, and the grantee be dead, and the persons beneficially interested in the annuity are his specific devisees of the copyhold premises, or his residuary devisees, then they should covenant to surrender; which may be done without another *testatum*, by adding, after "advised and required," above,

Covenant by devisees of grantor to surrender to purchaser.

"AND LASTLY, that they the said [*vendors*], or their heirs, and all and every other persons and person having any estate or interest therein, under or through the said [*grantee*], or under or through either of them the said [*vendors*], or the heirs of either of them, will and shall at the request," &c. *ut infra.*

But if the copyhold premises have descended to the grantee's heir, he should, after "aforesaid," *supra*, covenant to surrender, thus:

Covenant by heir of grantor to surrender to purchaser.

"*And also* in consideration of the sum of five shillings of lawful British money to the said [*heir*], paid by the said [*purchaser*], at or before the delivery of these presents, the receipt whereof is hereby acknowledged, *He* the said [*heir*], at the request and by the direction and appointment of the said [*executor or administrator*] (*or* [*vendors*] and [*executor or administrator*])"

"doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*purchaser*], his executors, administrators, and assigns, *That* he the said [*grantee or heir*] will, at the request, costs, and charges of the said [*purchaser*], his executors, administrators, or assigns, surrender into the hands of the lord or lords, lady or ladies of the said manor of —— for the time being, according to the custom of the said manor, *All*" &c. *ut supra.*

EXECUTOR, &c. ALONE.

(*n*) If the conveyance be made by an executor or administrator alone, substitute, "[executor or administrator]"

PERSONS BENEFICIALLY INTERESTED, AND EXECUTOR, &c.

If the conveyance be made by persons beneficially interested, and an executor or administrator, substitute,

"AND all of them the said [*vendors*] and [*executor or administrator*] *do*, and each of them *doth*," &c.

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names and name to be made use of in any action, suit, or

direct, and appoint the said [*grantor*], or his heirs, forth- 4. ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

other proceeding to be brought, commenced, instituted, or carried on for that purpose; they the said [*vendors*] and [*executor or administrator*], their executors and administrators, being indemnified from all loss, costs, charges, damages, and expenses relating thereto, or to be occasioned thereby. AND THE SAID [*vendor*] doth hereby for himself, his heirs, executors, and administrators, so far as relates to and concerns the one undivided —— part of the said [*wife*] his wife, of and in the said annuity and premises, and as to and concerning only the acts, deeds, title, and defaults of himself and his said wife, and of the said [*grantee*], relating thereto, and so only as to be answerable in damages rateably for and to the value of the same —— part; AND THE SAID [*vendor*] doth hereby for himself, his heirs, executors, and administrators, so far as relates to and concerns the one undivided —— part of him the said [*vendor*] of and in the said annuity and premises, and as to and concerning only the acts, deeds, title, and defaults of himself, and of the said [*grantee*] relating thereto, and so only as to be answerable in damages rateably for and to the value of the same —— part; AND THE SAID &c. (*making as many lien parts as there are parties beneficially interested*) covenant," &c. *as below.*

Covenant by person beneficially interested as to his wife's undivided part of annuity, and as to his, her, and grantee's acts, and so as to be answerable only rateably to the value thereof.

Covenant by another as to his part of annuity, and as to his and grantee's acts, and so as to be answerable only rateably to the value thereof.

If by a specific or residuary legatee, say,

Covenant by a specific or residuary legatee.

"AND THE SAID [*vendor*] doth hereby for himself, his heirs, executors, and administrators"

"covenant, promise, and agree with and to the said [*purchaser*], his executors, administrators, and assigns; *That* notwithstanding any act, deed, matter, or thing made, done, executed, committed, or knowingly suffered to the contrary by them the said [*vendors*], or by the said [*grantee*], the said annuity, at the time of the sealing and delivery of these presents, is a good and existing annuity for the lives of the said [*nominees*], and the life of the survivor of them: AND all and every the securities for the same are now valid and effectual in the law: AND ALSO that notwithstanding any such act, deed, matter, or thing as aforesaid, they the said [*vendors*] and [*executor or administrator*] now have, or some or one of them have or hath in themselves, himself or herself, good right, full power, and lawful and absolute authority to assign and transfer the said annuity and premises,

Limited to acts of vendors and grantee.

That annuity

and securities are valid.

For title.

4. ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

with to surrender or cause to be surrendered, *All* and singu-

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and every part and parcel thereof respectively, unto the said [*purchaser*], his executors, administrators, and assigns, in manner aforesaid, and according to the true intent and

For quiet enjoyment.

meaning of these presents; AND FURTHER, that it shall and may be lawful to and for the said [*purchaser*], his executors, administrators, and assigns, from time to time, to have, receive, take, and enjoy the said annuity and premises, and all the benefit and advantage thereof respectively, to and for his and their own use and benefit, (*Subject* as aforesaid), without any let, suit, trouble, molestation, denial, or interruption of, from, or by them the said [*vendor*], or any (*or* either) of them, or the executors or administrators of them or any (*or* either) of them, or by any other person or persons claiming or to claim by, from, through, under, or in trust for them, or any (*or* either) of them, or by, from,

Free from incumbrances.

through, under, or in trust for the said [*grantee*]: AND free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise by them the said [*vendors*], their heirs, executors, or administrators, or some or one of them, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, assignments, estates, titles, troubles, charges, and incumbrances whatsoever, made, done, or committed by them the said [*vendors*], or any (*or* either) of them, or the said [*grantee*], or by any person or persons claiming by, from, through, under, or in trust for

And for further assurance.

them, or any of them: AND MOREOVER, that they the said [*vendors*], and each and every of them, and the executors and administrators of them, and each and every of them, and all and every other person and persons whosoever, having or claiming any right, title, or interest of, in, to, or out of the said annuity and premises, by, from, under, or in trust for them, or any of them, will and shall, from time to time, and at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law of the said [*purchaser*], his executors, administrators, or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful acts, deeds, and things, devises, assignments, transfers, and assurances in the law whatsoever, for further

4. ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

lar the copyhold premises mentioned and comprised in the said indenture, and every part and parcel thereof, with their appurtenances; *To the use* of the said [*purchaser*], his heirs and assigns, according to the custom of the said manor of ——; *To the intent* that he the said [*purchaser*], his heirs and assigns, may stand seised and possessed of all and singular the same premises, with the appurtenances, *Subject* to the same conditions, *And upon* such and the same trusts, and with, under, and subject to the same powers and agreements as in the said indenture are mentioned and contained for securing the payment of the said annuity for the benefit of the said [*purchaser*], his executors, administrators, and assigns, instead of the said [*grantee*], his executors and administrators; *But subject* to the like clause of redemption for the benefit of the said [*purchaser*], his heirs and assigns, as in the same indenture is also mentioned and contained: AND the said [*purchaser*] doth hereby for himself, his heirs and assigns, expressly declare, that he and they will and shall stand seised and be possessed of, all and singular the same premises, with the appurtenances, accordingly. AND the said (*p*) [*grantee*] doth hereby lastly declare, that the surrender to be made by the said [*grantor*], or his heirs, to the use of the said [*purchaser*], his heirs or assigns as aforesaid, pursuant to the directions hereinbefore for that purpose contained, shall be deemed and taken, in full satisfaction

Direction by grantee to grantor to surrender copyhold premises to purchaser.

Use.

Intent.

Conditions.

Trusts.

Declaration trust by purchaser.

Declaration by grantee, that surrender to be made shall be in satisfaction of grantor's covenant.

(*p*) If by executor, &c., say,
"[*executor or administrator*], doth," &c. *ut supra.*

EXECUTOR, &c. ALONE.

If by persons beneficially interested, and executor, &c., say,
"[*vendors*] and [*executor or administrator*] do, and each of them doth hereby," &c. *ut supra.*

PERSONS BENEFICIALLY INTERESTED, AND EXECUTOR, &c.

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and better assigning and assuring the said annuity and premises, and every of them, and every part and parts thereof respectively, unto the said [*purchaser*], his executors, administrators, and assigns; *and* for further and better enabling and empowering him and them to receive and take the benefit and advantage thereof, to and for his and their absolute use; *As* by him the said [*purchaser*], his executors, administrators, or assigns, or his or their counsel learned in the law, shall or may be devised or advised and required."

4. ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

and discharge of the covenant entered into by him the said [*grantor*] with the said [*grantee*] for that purpose, by the said indenture as aforesaid. IN WITNESS, &c.

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5. ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

5. ASSIGNMENT *of an* ANNUITY *for the Life of the Grantor, charged on his Life Interest in Dividends of Stock; and* ASSIGNMENT *of the Annuity* BOND, WARRANT *of* ATTORNEY *and* JUDGMENT, *on which Execution has been entered up, and either with or without a* POLICY *of* INSURANCE *on the Grantor's Life; and* ASSIGNMENT *of the Life Interest to a new Trustee, or* DECLARATION *of Trust by the old Trustee.*

Parties.

THIS INDENTURE, made &c. BETWEEN [*grantee*], of &c., of the first part; [*trustee*], of &c., of the second part (*a*); [*purchaser*], of &c., of the third part; and [*purchaser's trustee*], of &c., of the fourth part. (*Recite annuity bond and warrant of attorney, ut ante*, p. 133). AND judgment was accordingly, on or about the —— day of ——, entered up against the said [*grantor*]. AND WHEREAS by indenture bearing even date with the said bond or obligation and made &c, *After reciting* that by an indenture, bearing date &c., the said [*trustees of settlement*], their executors, administrators, and assigns, were directed by and out of the interest and dividends to arise from £——, Three pounds per centum Consolidated Annuities, then standing in their names, or the stocks, funds, and securities for the same, yearly during the joint lives of the said [*grantor*] and [*lady*], to pay the yearly sum of £——, by half-yearly payments, unto the said [*lady*], for her sole and separate use and benefit: *And* from time to time to pay the residue and surplus of the said interest and dividends unto the said [*grantor*], or his assigns, for his or their own use and benefit, during the joint lives of him the said [*grantor*], and the said [*lady*]; *And* if the said [*grantor*] should survive the said [*lady*], then to pay unto the said [*grantor*], or his assigns, the whole

Recital of annuity bond, and judgment.

Recital of grant of annuity.

Reference to settlement, whereby grantor becomes entitled to dividends for his life.

(*a*) *Vide ante*, p. 123.

GRANTOR, A PARTY.

of such interest and dividends to and for his and their own use and benefit, during his life; *It was witnessed*, that in consideration of the sum of £——, to the said [*grantor*] paid by the said [*grantee*], the said [*grantor*] did grant unto the said [*grantee*], his executors, administrators, and assigns, during the life of the said [*grantor*], *One* annuity or clear yearly sum of £——, to be charged upon, and to be payable out of, the interest and dividends of the said £——, Three pounds per centum Consolidated Annuities, *To have*, hold, receive, take, and enjoy the same annuity unto the said [*grantee*], his executors, administrators, and assigns, thenceforth during the life of the said [*grantor*]; the same to be payable yearly, free from all taxes and other charges, upon the days, and in the manner mentioned and expressed in the condition of the said bond or obligation: And it was by the said indenture further witnessed, that for better securing the payment of the said annuity, he the said [*grantor*], did bargain, sell, assign, transfer, and set over, unto the said [*trustee*], his executors, administrators, and assigns, *All* the interest, dividends, and annual produce of the said £——, Three pounds per centum Consolidated Annuities, to which he the said [*grantor*] was entitled for his life, under and by virtue of the said indenture of settlement as aforesaid, *To have*, hold, receive, take, and enjoy the same unto the said [*trustee*], his executors, administrators, and assigns, during the life of the said [*grantor*], *Upon trust* to receive the same, and thereout to pay unto the said [*grantee*], his executors, administrators, and assigns, the said annuity or yearly sum of £——, during the life of the said [*grantor*], and all arrears thereof, and all costs, charges, and expenses (if any) which they the said [*grantee*] and [*trustee*], or either of them, or the executors, administrators, or assigns of them, or either of them, should pay, sustain, expend, or be put unto for or by reason or means of the non-payment of the said annuity or any part thereof, at the times, and in the manner thereinbefore expressed or appointed for the payment of the same, or the performance of the trusts thereby created; And to pay the residue of the said interest and dividends unto the said [*grantor*], his executors, administrators, and assigns, or as he or they should direct and appoint: And the said [*grantor*] thereby constituted and appointed the said [*trustee*], his executors, administrators, and assigns, and every of them, his attorney

5. ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

Recital of assignment of dividends to a trustee.

Recital of power of attorney.

5. ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

and attornies, to demand, sue for, recover, and receive the said interest and dividends, or any part thereof. AND in the said indenture there is contained a proviso enabling the said [*grantor*] to repurchase the said annuity, upon giving unto the said [*grantee*], his executors, administrators, or assigns, seven days' notice of his intention, and paying the sum of [*original purchase money*], and one half-yearly payment of the said annuity, with all arrears which should be then due, and a proportional part thereof, up to and until the time of repurchasing the same.

Recital of power of repurchase.

Recital of contract for purchase.

AND WHEREAS the said [*purchaser*] hath contracted and agreed with the said [*vendor*] for the absolute purchase of the said annuity for the price of £——.

Testatum.

NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— of lawful British money, to the said [*grantee*] paid by the said [*purchaser*], at the delivery of these presents, the receipt whereof he the said [*grantee*] doth hereby acknowledge, and from the same doth hereby release, and for ever discharge the said [*purchaser*], his executors and administrators, *He* the said [*grantee*] (*b*) by these presents *doth* bargain, sell, assign, transfer, and set over, unto the said [*purchaser*], his executors, administrators, and assigns, ALL THAT the said annuity or clear yearly sum of £——, in and by the said bond or obligation, judgment and indenture, secured, granted, and made payable unto the said [*grantee*], his executors, administrators, and assigns, as hereinbefore mentioned; *And* all arrears now due thereon; *Together* with the said bond or obligation, warrant of attorney, judgment, and indenture (*c*); *And* all and every sums and sum of money

Assignment of annuity,

arrears, bond, warrant of attorney, judgment, and indenture.

(*b*) *Vide ante*, p. 124, (*b*).

ASSIGNMENT OF POLICY OF INSURANCE ON A LIFE OR LIVES.

(*c*) If the grantee has effected an insurance on the lives of the nominees, and there is no covenant in the annuity deed respecting insurance, the policy may be assigned in the following manner, without any recital :—

"*And also*, ALL THAT policy of insurance, bearing date on or about, &c., and numbered ——, granted, or issued by the —— Life Insurance Office, whereby, for the annual premium of £——, the sum of £—— is insured to be paid to the said [*grantee*], his executors, administrators, and assigns, upon the decease of the said [*grantor*] (*or* upon the decease of the survivor of them the said [*nominees*]);"

thereby respectively secured or thereupon recoverable; *And* all the benefit and advantage thereof respectively, and also of the grant and covenants contained in the same indenture: AND all the right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of him the said [*grantee*], of, in, to, or out of the same annuity (*d*), monies, securities, and premises, and every or any part thereof respectively. TO HAVE, hold, receive, take, and enjoy the said annuity (*d*), monies, securities, and premises, unto the said [*purchaser*], his executors, administrators, and assigns, (henceforth *or*) from the —— day of —— last past, for and during the life of the said [*grantor*]; *Subject nevertheless* to the proviso contained in the said indenture, enabling the said [*grantor*] to repurchase the said annuity. AND for the considerations aforesaid, *he* the said [*grantee*] *Doth* hereby (*power of attorney and covenant to indemnify vendor, ut ante, p.* 129). AND THE SAID [*grantee*] doth hereby, for himself, his heirs, executors, and administrators, covenant with the said [*purchaser*], his executors, administrators, and assigns, that notwithstanding any act, deed, matter, or thing whatsoever, had, made, done, committed, or suffered to the contrary by the said [*grantee*], the said annuity is a good, valid, and subsisting annuity: AND that the same or any part thereof has not been released, extinguished, or determined: AND that notwithstanding any such act, deed, matter, or thing as aforesaid, he the said [*grantee*] now hath in himself, good right, full power, and lawful and absolute authority by these presents to bargain, sell, assign, and set over, or otherwise assure the said annuity and premises, respectively, and every part and parcel of the same, with the appurtenances, unto the said [*purchaser*], his executors, administrators, and assigns, according to the true intent and meaning of these presents: AND that he the said [*grantee*], his executors or administrators, will not, nor shall, at any time hereafter, without the consent in writing of the said [*purchaser*], his executors, administrators, or assigns, or the order or decree of some court of law or equity, alter, revoke, or annul any of the powers or authorities hereinbefore given to the said [*purchaser*], his exe-

5. ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

All monies, &c.

All the right.

Habendum of annuity.

Subject to repurchase.

Power of attorney.

Covenant by vendor, that annuity is subsisting;

and not released.

For title.

Not to revoke powers, but suffer name to be used, being indemnified from costs.

(*d*) "policy of insurance," POLICY.

5. ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

cutors, administrators, and assigns, for receiving and recovering the said annuity and premises, but will and shall permit and suffer his and their name or names to be made use of in any action, suit, or other proceeding to be brought, commenced, instituted, or carried on for that purpose; he the said [*grantee*], his executors and administrators, being indemnified as aforesaid, from all loss, costs, charges, damages, and expenses relating thereto, or to be occasioned thereby: AND FURTHER, that from time to time, and at all times hereafter, during the life of the said [*grantor*], or till the said annuity shall be repurchased, it shall or may be lawful to and for the said [*purchaser*], his executors, administrators, and assigns, to have, hold, and enjoy the said annuity, and to receive and take the benefit thereof, and of the said securities (*f*) in manner and form aforesaid, according to the true intent and meaning of these presents, without any let, suit, trouble, interruption, hindrance, or denial whatsoever, of, from, or by the said [*grantee*], his executors or administrators: AND free and clear, and freely, clearly, and absolutely acquitted, exonerated, released, and discharged, or otherwise by him the said [*grantee*], his heirs, executors, or administrators, at his or their own costs and charges, in all things well and sufficiently protected, defended, saved harmless, and kept indemnified, of, from, and against all and all manner of former and other titles, charges, and incumbrances whatsoever, made, done, committed, executed, or suffered by the said [*grantee*], his executors or administrators: AND LASTLY, that he the said [*grantee*], his executors and administrators, will and shall from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges in the law of the said [*purchaser*], his executors, administrators, or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all such further and other lawful acts, deeds, assignments, letters of attorney, and other assurances in the law whatsoever, for further, better, and more effectually or satisfactorily assigning, or otherwise assuring, the said annuity and premises, and every part and parcel of the same, unto the said [*purchaser*], his executors, administrators, and assigns, and also for authorizing and empowering him and them to receive and derive the full

For peaceable enjoyment.

Free from incumbrances.

For further assurance.

POLICY.

(*f*) "and also the benefit of the said policy of insurance,"

benefit thereof respectively, according to the true intent and meaning of these presents; *As* by the said [*purchaser*], his executors, administrators, or assigns, or his or their counsel in the law shall be advised or devised and required; [*So* as such further assurances, or any of them, shall not contain in them or imply any further or other covenant or warranty, on the part of the person or persons who shall be requested to make and execute the same, than for himself, herself, and themselves respectively, and the acts, deeds, and defaults of himself, herself, and themselves respectively, and his, her, and their respective executors and administrators; *And* so as the person or persons, who shall be requested to do such acts, or make such further assurances, shall not be compelled or compellable for the purpose of making or doing the same, to go or travel from his, her, or their then dwelling or place of abode, or respective dwellings or places of abode.] AND THIS INDENTURE FURTHER WITNESSETH (*g*), that for the considerations aforesaid, and in consideration of ten shillings of lawful British money, to the said [*old trustee*] paid by the said [*new trustee*], at the delivery of these presents, the receipt whereof is hereby acknowledged, *He* the said [*old trustee*], at the request and by the direction of the said [*grantee*], and upon the nomination and appointment of the said [*purchaser*], by these presents *doth* bargain, sell, assign, transfer, and set over, unto the said [*new trustee*], his executors, administrators, and assigns, ALL THOSE the said dividends and interest of the said £——, Three pounds per centum Consolidated Annuities, which in and by the above recited indenture were assigned by the said [*grantor*] to the

5. ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

Further testatum.

Assignment by old trustee, by the direction and appointment of vendor and purchaser, to new trustee, of dividends.

(*g*) If the old trustees be continued, add,

OLD TRUSTEE CONTINUED.

"*And it is hereby declared and agreed,* by and between the said parties to these presents, as far as they are respectively interested, That the said [*trustee*], his executors, administrators, and assigns, will and shall from time to time, and at all times hereafter, during the life of the said [*grantor*], stand possessed of and interested in the said interest and dividends, UPON THE TRUSTS," &c., *ut post,* p. 152. ADD *covenant from the trustee to the purchaser, that he has not incumbered, ut post,* p. 152.

Declaration of trust.

Covenant by the old trustee that he has not incumbered.

5. ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

[*old trustee*], his executors, administrators, and assigns: AND all the right, title, interest, property, claim, and demand whatsoever, of him the said [*old trustee*], of, in, to, or out of the same. TO HAVE, hold, receive, take, and enjoy the said interest and dividends unto the said [*new trustee*], his executors, administrators, and assigns, for and during the life of the said [*grantor*]; UPON THE TRUSTS, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements, mentioned, expressed, and declared of and concerning the same, in and by the said indenture of the —— day of ——; *But so nevertheless*, that all the benefit and advantage of the same trusts, by the same indenture declared or intended in favour of the said [*grantee*], his executors, administrators, and assigns, shall belong to and be received and enjoyed by the said [*purchaser*], his executors, administrators, and assigns. AND THE SAID [*old trustee*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*new trustee*], his executors, administrators, and assigns, that he the said [*old trustee*] hath not at any time heretofore made, done, executed, committed, or knowingly or willingly suffered any act, matter, or thing whatsoever, whereby or wherewith, or by reason or means whereof, the said interest and dividends, or any part thereof, are, is, can, shall, or may be impeached, charged, incumbered, or in any way affected. IN WITNESS, &c.

All the right.

Habendum of dividends.

Upon trusts mentioned in grant.

But trusts for vendor to be for purchaser's benefit.

Covenant by old trustee that he has not incumbered.

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6. ASSIGNMENT OF TONTINE ANNUITY.

6. ASSIGNMENT, *with the Consent of the Grantee's Administratrix* de bonis non *and her Husband, of a* TONTINE ANNUITY, *for the Life of the Vendor's Wife, payable by Trustees out of an Estate in* IRELAND, *with* BENEFIT *of* SURVIVORSHIP.

Parties.

THIS INDENTURE, made &c.; BETWEEN [*vendor*], of &c., and [*wife*] his wife, (late [——], spinster), of the first part; [*husband of administratrix*], of &c., and [*administra-*

trix de bonis non], his wife (late [——], spinster), which [*administratrix*] is administratrix of the goods and chattels of [*grantee*], late of ——, in the county of ——, [*description*], deceased, left unadministered by [*widow*] his widow, and is also executrix of the will of the said [*widow*], of the second part; and [*purchaser*], of &c., of the third part. WHEREAS, by indentures of lease (*a*) and release, bearing date &c., the release being made between [*grantor*], of &c., of the first part; [*trustees*], of the second part; and the several other persons whose names are thereunder written as subscribers to the tontine thereinafter mentioned, of the third part, *Certain* tontine annuities or yearly sums, increasing by survivorship, were thereby secured to the said [*trustees*], their heirs, and assigns, *In trust* for the several persons parties thereto of the third part; AND were thereby charged on and made issuing and payable out of the rents and profits of certain freehold estates of him the said [*grantor*], in the said county of ——. AND WHEREAS, by two several certificates or debentures numbered —— and ——, under the hands of the said trustees of the said tontine, bearing date respectively the —— day of ——, 17—, they the said trustees did certify and declare that the said [*grantee*] had subscribed two shares in the first class of the said tontine, and had named his daughter the said [*wife of vendor*] (then [*maiden name*]) and

6. ASSIGNMENT OF TONTINE ANNUITY.

Description of administratrix.

Recital of creation of tontine annuities, charged on lands in Ireland.

Recital of debentures, whereby grantee became entitled to two annuities with benefit of survivorship.

(*a*) A lease or bargain and sale for a year, as a preliminary to a release of lands in Ireland, is sometimes prepared through inadvertence; but it is unnecessary, because, by the Irish statute 9 Geo. 2, c. 5, s. 6, (6th vol, Irish Statutes, 192), It is enacted, "That in all cases the recital of a lease for a year in the deed of release shall be deemed and taken to be full and sufficient evidence of such lease." By the 7th section, the act was to continue in force until the first day of May, 1740. And by the Irish stat. 1 Geo. 3, c. 3, 7th vol. I. S. 808, it is made perpetual.

Lease for year unnecessary for lands in Ireland.

By the 2nd section of the latter act, It is enacted, "That in all cases of pleading deeds of lease and release, wherein it may be necessary to allege the bringing such deeds into court, it shall be sufficient to allege the bringing into court the deed of release, in which the recital of such lease shall, to all purposes whatsoever, be as effectual as producing the same." [But this enactment was superfluous, for in pleading a conveyance by lease and release, it was never necessary to make profert of the bargain and sale for a year, because that assurance operates under the Statute of Uses, and is not supposed to be of course in the possession of *cestui que* use. *Bolton* v. *Bishop of Carlisle*, 2 H. Bl. 262: *Jenkin* v. *Peace*, 6 Mee. & W. 722. An act has just passed by which the lease for a year is dispensed with as to conveyances in England. *Vide infra*, tit. BARGAIN AND SALE.]

In pleading lease and release in Ireland, sufficient to allege bringing release into court.

6. ASSIGNMENT OF TONTINE ANNUITY.

[*other nominee*], son of ——, of —— aforesaid, his nominees; *And* the said trustees did therefore by the said debentures further certify that the said [*grantee*], his executors, administrators, and assigns, should, in pursuance of the said indenture, receive two several annuities of £——, by half-yearly payments, with such additional interest from time to time as should accrue by survivorship in the first class of nominees of the said tontine; *One* of such annuities to be payable during the life of the said [*vendor's wife*], (then [*maiden name*]); *And* the other for the life of the said [*other nominee*].

Recital of grantee's death intestate,

AND WHEREAS the said [*grantee*] departed this life in the month of ——, intestate, leaving his widow, the said [*widow*], and two children, namely, the said [*vendor's wife*] and [*administratrix*], him surviving:

and grant of administration to his widow,

AND on the —— day of ——, the said [*widow*], the widow, obtained letters of administration of the goods and chattels of the said [*grantee*], out of the Prerogative Court of the Archbishop of Canterbury;

who delivered debentures as a gift to her two daughters, jointly,

AND the said [*widow*], in her life-time, parted with her interest in the said two debentures, by delivering them to the said [*wife of vendor*] and [*administratrix*], previously to their intermarriages respectively, no assignment thereof being deemed necessary, the same debentures being respectively payable to the bearer thereof.

who agreed to hold them in severalty;

AND WHEREAS, ever since such delivery of the said debentures by the said [*widow*], it was understood and agreed between the said [*vendor*] and [*wife*] his wife, and [*husband of administratrix*] and [*wife*] his wife, that the said annuity payable for the life of the said [*vendor's wife*] should be held and received by her as the separate property of the said [*vendor*] and [*wife*] his wife, and that the said annuity payable for the life of the said [*other nominee*] should be considered and taken as the separate property of the said [*husband of administratrix*] and [*wife*] his wife; and they have ever since received such respective annuities independently of each other, and as their separate and distinct property;

but no assignment was made.

but no assignment was ever executed by the said parties for carrying such arrangement into effect.

Recital of widow's death, and proof of her will by daughter.

AND WHEREAS the said [*widow*] is dead, having by her will appointed the said [*administratrix*] executrix, who hath since proved the said will in the Prerogative Court of Canterbury.

Recital of administration to grantee *de bonis non*, granted to daughter.

AND WHEREAS the said [*administratrix*] did also, on the —— day of —— 18—, obtain letters of administration of the goods and chattels of the said [*grantee*], left unadministered by the said [*widow*], out of the said Prerogative

Court of Canterbury. And whereas the said [*vendor*] and [*wife*] his wife, have agreed with the said [*purchaser*], for the sale to him of the said tontine annuity, payable during the life of the said [*vendor's wife*], and of all arrears, and all future payments to accrue due in respect thereof, at the price of £——: And in order legally to assign the same, the said [*husband of administratrix*], and [*wife*] his wife, have agreed to join in the assignment thereof, in manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of £—— lawful British money to the said [*vendor*] and [*wife*] his wife, with the consent of the said [*husband of administratrix*] and [*wife*] his wife, paid by the said [*purchaser*], at the execution of these presents, the receipt whereof is hereby acknowledged; *And also* in consideration of the sum of ten shillings to the said [*husband of administratrix*] and [*wife*] his wife, at the same time paid by the said [*purchaser*], the receipt whereof is hereby acknowledged, *They* the said [*vendor*], and [*wife*] his wife, with the consent of the said [*husband of administratrix*], and [*wife*] his wife, by these presents *do*, and each of them *doth* grant, bargain, sell, assign, transfer, and set over; *And* the said [*husband*], as the husband of the said [*administratrix*], *And* the said [*administratrix*], as executrix of the will of the said [*widow*], and also as administratrix de bonis non, and legal representative of the said [*grantee*], deceased as aforesaid, *And also* so far as respects their own individual rights and interest, at the instance and request, and with and by the privity, consent, and direction of the said [*vendor*] and [*wife*] his wife, by these presents *do*, and each of them *doth* bargain, sell, assign, ratify, and confirm unto the said [*purchaser*], his executors, administrators, and assigns, The said annuity in the first class of the said tontine called "——'s tontine," by the said certificate or debenture, numbered ——, certified to be payable to the said [*grantee*], his executors, administrators, and assigns, for the life of the said [*vendor's wife*], then [*maiden name*] as aforesaid, with all arrears due thereon, and all such additional interest as shall from time to time accrue by survivorship; together with the said certificate or debenture: And all the right, interest, benefit, claim, and demand whatsoever of them the said [*vendor*], and [*wife*] his wife, [*husband of administratrix*] and [*wife*] his wife, in their several and respective capacities aforesaid, of, in, to, or out of the said annuity, debenture, and

6. ASSIGNMENT OF TONTINE ANNUITY.

Recital of contract for sale.

And agreement of administratrix and her husband to join in assignment.

Testatum.

Vendor and wife,

and administratrix and husband, assign

tontine annuity.

With accruer.

All the right, &c.

6. ASSIGNMENT OF TONTINE ANNUITY.

premises, and every part thereof; *Together* with all usual or necessary powers and remedies, in their respective names, for recovering and receiving the same. To HAVE, hold, receive, and take the said annuity, debenture, and premises, with such benefit of increase by survivorship as aforesaid, unto the said [*purchaser*], his executors, administrators, and assigns, to and for his and their own use and benefit.

All powers, &c. *Habendum.*

Covenant by vendor for himself and wife,

Covenant by husband of administratrix for himself and wife,

That they have not incumbered.

AND THE SAID [*vendor*], for himself, his heirs, executors, and administrators, and for the said [*wife*] his wife; AND THE SAID [*husband of administratrix*], for himself, his heirs, executors, and administrators, and for the said [*wife*] his wife, *do* hereby covenant and declare to and with the said [*purchaser*], his executors, administrators, and assigns; that they the said [*vendor*] and [*wife*] his wife, and [*husband of administratrix*] and [*wife*] his wife, have not made, done, or committed any act, deed, matter, or thing whatsoever, whereby or by means whereof the annuity, debenture, and premises hereby assigned, or any part thereof, are, is, can, shall, or may be impeached, charged, assigned, or incumbered in any manner howsoever:

Covenant by vendor for himself and wife for further assurance.

AND FURTHER, that they the said [*vendor*] and [*wife*] his wife will and shall at any time or times hereafter, upon the reasonable request, costs, and charges of the said [*purchaser*], his executors, administrators, or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all such further and other acts, deeds, assignments, powers, and authorities in the law as shall be requisite for the better and more effectually assigning the said annuity, debenture, and premises unto the said [*purchaser*], his executors, administrators, and assigns, and enabling him and them to receive and recover the same:

General covenant by vendor for peaceable enjoyment.

AND LASTLY, the said [*vendor*], for himself, his heirs, executors, and administrators, doth hereby further covenant with the said [*purchaser*], his executors, administrators, and assigns, that he the said [*purchaser*], his executors, administrators, and assigns, shall receive the said tontine annuity, without any let, suit, trouble, hindrance, or interruption, by any person or persons whomsoever;

And to transmit certificates of his wife being alive.

AND ALSO, that he the said [*vendor*], his executors or administrators, will and shall, on the tenth day of October and the tenth day of April in every year during the life of the said [*wife*], procure proper certificates, to be signed by the minister or churchwardens of the parish in which the said [*wife*] shall be residing, of her being alive; and transmit such certificates, from time to

time, to the said [*purchaser*], his executors, administrators, and assigns; and will and shall do all other acts requisites and necessary to enable him and them to receive the said annuity. In witness &c.

6. ASSIGNMENT OF TONTINE ANNUITY.

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7. ASSIGNMENT OF ANNUITY AND POLICY UPON TRUSTS OF ANOTHER DEED.

7. ASSIGNMENT *of an* ANNUITY, *charged upon the Interest of Money in the Funds, and upon a Reversion in Fee, and a* POLICY OF INSURANCE *upon the Life of the Grantor; for the Benefit of an Infant, the Child of the Grantor, and of whose Money the same had been paid off, Upon Trusts declared by an Indenture of even Date.*

Parties.

THIS INDENTURE, made &c., BETWEEN [*grantee*], of &c., of the first part; [*grantor*], of &c., widow of [*husband*], late of &c., deceased, of the second part; [*cestui que trust*], an infant of the age of —— years, (daughter of the said [*grantor*] by her late husband, the said [*husband*]), of the third part; and [*three trustees*], of &c., of the fourth part.

Recital of grant of annuity for the life of grantor, charged upon dividends and reversion in fee.

WHEREAS, by indenture bearing date, &c., and made between the said [*grantor*] by her then name and description of [*former name*], of &c., widow, of the one part: and the said [*grantee*], of the other part, *It was witnessed* that in consideration of the sum of £——, the said [*grantor*] Did grant, bargain, sell, and confirm unto the said [*grantee*], his executors, administrators, and assigns, during the life of the said [*grantor*], *One* annuity or clear yearly sum of £——, to be issuing out of and charged upon a certain annual sum of £—— bank short annuities, which were to continue for the term of twenty-nine years, from the twenty-sixth day of January, 1779, (which annuities have since ceased); and upon all such dividends, interest, or annual proceeds of certain other bank annuities thereinbefore mentioned, or such other funds or securities, in or upon which the same or any part thereof had been or might be thereafter invested, as the said [*grantor*] then was, or should or might become, interested in or entitled unto; and upon a moiety of the reversion in fee-simple, of and in certain messuages, &c. thereinbefore mentioned, and to which moiety the said [*grantor*]

7. ASSIGNMENT OF ANNUITY AND POLICY UPON TRUSTS OF ANOTHER DEED.

was entitled in manner thereinbefore mentioned and recited, and the rents, issues, and profits of the same moiety: *To hold* the same annuity unto the said [*grantee*], his executors, administrators, and assigns, during the life of the said [*grantor*], to be paid by equal quarterly payments on, &c. in every year: *And* the said [*grantor*] did thereby appoint the said [*grantee*], his executors, administrators, and assigns, to be her attorney and attorneys, with full power and authority to recover and receive the said annuity from the trustee or trustees for the time being, of the settlement or wills thereinbefore recited, out of the aforesaid bank short annuities, and the said dividends, interest, or annual proceeds of the said other stocks, funds, and securities, and the rents and profits upon which the said annuity was so charged as aforesaid: *And* by the indenture now being recited, powers of entry and distress upon and perception of the rents and profits of the moiety, hereditaments, and premises thereby charged as aforesaid, were given to the said [*grantee*], his executors, administrators, and assigns, for the better securing the aforesaid annuity: and the said [*grantor*] did thereby for herself, her heirs, executors, and administrators, covenant with the said [*grantee*], his executors, administrators, and assigns, to pay to him and them the said annuity, at the times and in the manner thereinbefore mentioned and appointed for payment thereof: *And* in the now reciting indenture was contained a proviso that in case the said [*grantor*] should at any time be desirous to repurchase the said annuity, and should give three months' notice in writing under her hand to the said [*grantee*], his executors, administrators, or assigns, of such her intention, and should at the time fixed in such notice (which should be a day whereon some quarterly payment of the said annuity should become due) pay to the said [*grantee*], his executors, administrators, or assigns, the sum of £——, over and above such quarterly payment, and all arrears of the said annuity, then the future payment of the said annuity to the said [*grantee*], his executors, administrators, and assigns, should cease and determine. AND WHEREAS the said [*grantee*], at the time of the execution of the aforesaid indenture, took out a policy of insurance on the life of the said [*grantor*], in the office of the society for equitable assurance on lives and survivorships, which policy is dated and numbered ——, and the life of the said [*grantor*] was thereby insured at the sum of £——.

Recital of power of attorney to receive and recover dividends and rents.

Recital of powers of entry and distress.

Recital of covenant for payment of annuity.

Recital of proviso for repurchase.

Recital of policy of assurance on grantor's life.

7. ASSIGNMENT OF ANNUITY AND POLICY UPON TRUSTS OF ANOTHER DEED.

AND WHEREAS the said [*grantor*] intermarried with her said late husband, the said [*husband*], in or about the year ——; *And* the said [*husband*] departed this life in or about the month of ——. AND WHEREAS, in or about the month of ——, the sum of £—— was paid to the said [*grantee*], for which he signed a receipt, acknowledging the same to be in full for the repurchase of the aforesaid annuity; *And* at the same time the sum of £——, being the amount of a benefit which had arisen on the said policy from the time of taking out the same (*a*), and was also paid to the said [*grantee*] as the purchase-money for the said policy; *And the* said several sums of £——, and £——, were paid out of monies belonging to the said [*cestui que trust*], but no assignment hath hitherto been made by the said [*grantee*] of the said annuity, or of the aforesaid policy. AND WHEREAS the said [*grantee*] hath, at the request of the said [*grantor*], and of her said daughter the said [*cestui que trust*], agreed to assign the said annuity and all arrears now due, and hereafter to accrue due in respect thereof, and also the aforesaid policy of insurance, and all benefit and advantage thereof, unto the said [*trustees*], as trustees thereof, Upon such trusts and in such manner as hereinafter is expressed; NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, and of ten shillings to the said [*grantee*] paid by the said [*trustees*] upon the execution of these presents, the receipt whereof is hereby acknowledged, *He* the said [*grantee*, at the request and by the direction of the said [*grantor*] and [*cestui que trust*], by these presents *doth* bargain, sell, assign, transfer, and set over, unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT the annuity, clear yearly sum, or rent-charge of £——, secured as aforesaid by the hereinbefore recited indenture of the —— day of ——: And all arrears now due, and hereafter

Recital of grantor's intermarriage and death of her husband.

Recital of repurchase of annuity.

Of consideration paid for benefit of policy.

And that the same was paid out of monies belonging to the infant child of the grantor.

No assignment previously made by grantee.

Recital of agreement by grantee to assign annuity and policy to trustees.

Testatum.

Assignment by grantee, at request of grantor and *cestui que trust*, to trustees of annuity.

Arrears.

(*a*) Before the grantee of an annuity effects an insurance on the life of the grantor, he should ascertain whether the office will *at any time* re-purchase his interest in the policy: in the above instance, as the insurance had been effected for some years, several hundred pounds were paid to the grantee for the benefit of the policy, which was very advantageous to him, as he also received the annuity, and the full sum originally paid for the purchase. Some of the offices will not re-purchase the policy, unless it has been granted for a certain period; others will repurchase at any time.

Grantee should inquire whether insurance office will purchase benefit of policy.

7. ASSIGNMENT OF ANNUITY AND POLICY UPON TRUSTS OF ANOTHER DEED.

to become due in respect of the same annuity; And all and singular the powers, authorities, and remedies whatsoever by the same indenture given and granted for recovering and enforcing the payment thereof: *And also* ALL THAT the aforesaid policy of assurance, and all present and future benefit and advantage thereof, and all monies whatsoever, recoverable by virtue of the same policy: AND all the right, title, interest, trust, property, claim, and demand whatsoever, both at law and in equity, of him the said [*grantee*] of, in, to, or out of the said annuity, arrears, policy, monies, and premises and every or any part thereof; TO HAVE, hold, receive, take, and enjoy the said annuity, arrears, policy, monies, and premises, unto the said [*trustees*], their executors, administrators, and assigns, from the —— day of —— last past, for and during the life of the said [*grantor*], as fully, amply, absolutely, and beneficially, to all intents and purposes whatsoever, as he the said [*grantee*], his executors or administrators, could have enjoyed, received, and taken the same, if these presents had not been made, and if the said [*grantee*] had not received the said several sums of £——, and £——, so paid to him as aforesaid; *Nevertheless, Upon* and for the trusts, intents, and purposes, and subject to the powers and provisoes, declared and expressed of and concerning the same, in and by a certain indenture bearing even date with these presents, and made between the said [*grantor*] of the first part; the said [*cestui que trust*] of the second part; and the said [*trustees*] of the third part: And upon or for no other trust, intent, or purpose whatsoever. AND the said [*grantee*] doth hereby constitute and appoint the said [*trustees*], their executors, administrators, and assigns, to be his true and lawful attornies and attorney, irrevocably, in the name or names of him the said [*grantee*], his executors, or administrators, but upon and for the trusts aforesaid, to demand, distrain, sue for, recover, and receive of and from every or any person or persons who is or are or shall or may be interested or liable to pay the same respectively, the said annuity, arrears, policy, monies, and premises, and all and every other sum or sums of money due or to become due under or by virtue of the firstly hereinbefore recited indenture and policy of insurance, or either of them, and every or any part or parts thereof respectively: AND on receiving the same, or any part thereof respectively, in the name or names of him the said [*grantee*], his exe-

All powers, &c. Policy.

All the right.

Habendum.

Upon trusts declared by indenture of even date.

Power of attorney to receive and recover annuity, &c.

7. ASSIGNMENT OF ANNUITY AND POLICY UPON TRUSTS OF ANOTHER DEED.

cutors or administrators, to make, execute, and give good and sufficient releases and discharges for the same: AND for all or any of the purposes aforesaid, from time to time to nominate and appoint one or more attorney or attornies under them the said [*trustees*], their executors, administrators, or assigns, and to revoke, alter, or vary such nomination and appointment at their or his pleasure; AND generally to do and execute all and every such further and other lawful acts and things, for recovering and receiving the same annuity and premises as he the said [*grantee*], his executors or administrators, could or might have done and executed; *He* the said [*grantee*] hereby allowing, ratifying, and confirming, and agreeing to allow, ratify, and confirm all and whatsoever the said [*trustees*], their executors, administrators, or assigns, shall do or cause to be done in the premises by virtue of these presents. AND THE SAID [*grantee*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*trustees*], their executors, administrators, and assigns, that he the said [*grantee*] hath not at any time heretofore assigned or set over the said annuity and premises, or discharged the same, or any part thereof respectively; AND that he the said [*grantee*] now hath in himself good right and lawful authority to assign the same unto them the said [*trustees*], their executors, administrators, and assigns, *Upon* the trusts and in manner aforesaid, according to the true intent and meaning of these presents; AND that he the said [*grantee*], his executors or administrators, will not, nor shall at any time hereafter, without the consent in writing of the said [*trustees*], their executors, administrators, or assigns, alter, revoke, or annul, all or any of the powers, or authorities hereinbefore contained and given to the said [*trustees*], their executors, administrators, and assigns: AND that it shall and may be lawful to and for the said [*trustees*], their executors, administrators, and assigns, to receive and take the said annuity, and other the monies hereby assigned, or intended so to be, when and as the same shall respectively become due and payable, without any let, suit, or interruption whatsoever, of, from, or by him the said [*grantee*], his executors, or administrators: AND free and clear of and from all charges and incumbrances whatsoever, made, done, and committed, and to be made, done, and committed by him the said [*grantee*], his executors or administrators; AND FURTHER,

Covenant by vendor, that he hath not assigned annuity, &c.

For title.

Not to revoke powers.

For peaceable enjoyment.

Free from incumbrances.

For further assurance.

7. ASSIGNMENT OF ANNUITY AND POLICY UPON TRUSTS OF ANOTHER DEED.

that he the said [*grantee*], and his executors or administrators, will and shall from time to time, and at all times hereafter, upon the reasonable request, and at the costs and charges of the said [*trustees*], their executors, administrators, or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful acts, deeds, assignments, letters of attorney, and other assurances in the law whatsoever, for the further, better, more perfectly, and absolutely assigning and assuring the said annuity, arrears, policy, monies, and premises, and every part thereof, unto the said [*trustees*], their executors, administrators, and assigns, or for better enabling them or him to recover and receive the same, *As* by the said [*trustees*], their executors, administrators, or assigns, or their or his counsel in the law, shall be devised or advised and required (*b*). IN WITNESS &c.

Trustees should have power of sale.

(*b*) In the above deed, or in the deed referred to, there should be inserted a power, enabling the trustees to sell the annuity and policy, and to lay out the money in the funds, &c.

Power to trustees to sell annuity.

"PROVIDED ALWAYS, that at any time or times hereafter, it shall be lawful for the said [*trustees*] and the survivor of them, and the executors, administrators, and assigns of such survivor, with the consent in writing of ——, and after the decease of ——, at the discretion of the said trustees or trustee, absolutely to sell and dispose of the said annual sum or yearly rent-charge and policy, hereby assigned or intended so to be, and the monies assured by the said policy, either by public sale or private contract, to any person or persons willing to purchase the same, with liberty to buy in the same at any auction or auctions, to enter into, do, and execute all such contracts, acts, and deeds, as to them or him shall seem necessary and proper; AND the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, shall stand and be possessed of the monies to arise from such sale, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as are expressed and declared of and concerning the same, in and by the aforesaid indenture, bearing or intended to bear even date with these presents."

and stand possessed of purchase monies upon trusts of settlement.

8. ASSIGNMENT *of an* ANNUITY BOND, WARRANT OF ATTORNEY, *and* JUDGMENT, *and a* TERM, *on a* RE-PURCHASE, *to two separate Trustees,* In trust *for the Grantor: either by Indorsement or by another Deed.*

8. ASSIGNMENT OF ANNUITY AND SECURITIES ON RE-PURCHASE, IN TRUST FOR GRANTOR.

THIS INDENTURE, made, &c.: BETWEEN (*a*) [*grantee*], of &c., of the first part; [*trustee of term*], of &c., of the second part; Sir [*grantor*], of &c., baronet, (late ——, esquire), of the third part; [*assignee of annuity*], of &c., of the fourth part; and [*assignee of term*], of the fifth part. (WHEREAS, by an indenture, dated, &c., and made between the said Sir [*grantor*], (then ——, esquire), of the first part; the said [*grantee*], of the second part; and the said [*trustee*], of the third part: *It is witnessed,* that in consideration of the sum of £——, by the said [*grantee*] paid to the said Sir [*grantor*], *He* the said Sir [*grantor*] did grant unto the said [*grantee*], her executors, administrators, and assigns, *One* annuity or clear yearly sum of £——, to be paid and payable during the term of ninety-nine years, if the said [*grantor*] should so long live; and to be charged upon, and yearly issuing out of, all and singular the manor, messuages, lands, tenements, rectories, tithes, rent-charges, and hereditaments, situate, lying, and being, in the counties of —— and ——, and devised by the will of [*testator*], of &c., deceased; a recital or particular of which was annexed by way of schedule to an indenture or deed of receivership, bearing even date with the said indenture, and by which [*receiver*], of &c., was appointed receiver of the rents and profits of the

Parties.

Recital of

grant of annuity,

for ninety-nine years, if grantor should so long live,

charged upon manors, &c.

mentioned in deed of receivership of even date.

(*a*) If the assignment be made by indorsement on the grant, instead of describing the persons of the first, second, and third parts, say—

BY INDORSEMENT.

"the within-named [*grantee*], of the first part; the within-named [*trustee*], of the second part; the within-named [*grantor*], now Sir [*grantor*], baronet, of the third part; and [*assignee*]," &c. *ut supra.*

In which case omit the recitals included in parentheses, and begin with the recital of contract for re-purchase, *post,* p. 164.

8. ASSIGNMENT OF ANNUITY AND SECURITIES ON REPURCHASE, IN TRUST FOR GRANTOR.

said estates, on behalf of the several persons who were purchasers of annuities from the said [*grantor*]: *To hold* the same unto and by the said [*grantee*], her executors, administrators, and assigns, for and during the said term of ninety-nine years, if the said [*grantor*] should so long live (*Subject* as therein mentioned); and the said annuity to be paid by equal quarterly payments as therein mentioned without any deduction or abatement whatsoever: AND by the said indenture [it was declared, that if the said [*grantor*] should depart this life on any other day than one of the said quarterly days of payment of the said annuity, then a proportional part of the said annuity should be paid to the said [*grantee*], her executors, administrators, or assigns, immediately after the decease of the said [*grantor*], for the time which he should have lived of the then current quarter of a year: AND] *it was further witnessed,* that for the considerations aforesaid, and securing the payment of the said annuity, *He,* the said [*grantor*], did demise unto the said [*trustee*], his executors and administrators, *All those* the manors, messuages, lands, tenements, hereditaments, and premises thereby charged with the payment of the said annuity, with the appurtenances, *To hold* the same unto the said [*trustee*], his executors, administrators, and assigns, for the term of —— years, *Upon* the trusts therein mentioned, for securing the payment of the said annuity: AND in the said indenture is contained a power enabling the said [*grantor*] to repurchase the said annuity on the terms and conditions therein mentioned and expressed). AND WHEREAS the said [*grantor*] hath contracted and agreed with the said [*grantee*] for the repurchase of the said annuity or for the sum of £——: AND the said [*grantor*], being desirous of keeping on foot the said annuity and the several securities for the same, hath requested the said [*grantee*] to assign and make over the said annuity, and the several securities for the same, and all benefit and advantage thereof, unto the said [*assignee of annuity*], his executors, administrators, and assigns, Upon the trusts hereinafter mentioned or referred unto; which she hath contracted and agreed to do: AND it hath been also agreed that the said [*trustee*] shall assign all the now residue and remainder of the (*b*) (said) term of —— years,

Habendum.

With proportionate payment.

Recital of

demise to trustee of parcels.

Habendum for years,

Upon trusts for securing annuity.

Power to repurchase.

Recital of contract for repurchase.

Recital of grantor's desire to keep annuity and term on foot, and grantee's and trustee's consent thereto.

BY INDORSEMENT.

(*b*) If by indorsement, say—"within-mentioned"

and the several manors, hereditaments, and premises, therein comprised, unto the said [*assignee of term*], his executors, administrators, and assigns, Upon the trusts and in the manner hereinafter also mentioned. And whereas all arrears of the said annuity have been paid and discharged by the said [*grantor*] up to the day of the date of these presents, as the said [*grantee*] doth hereby acknowledge; [*But* the above-recited indenture hath been lost or destroyed, and cannot now be found]. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, and of the sum of £—— to the said [*grantee*] before the delivery of these presents paid by the said [*grantor*], the receipt whereof being in full for the absolute repurchase of the annuity or yearly sum of £——, so granted and secured as (*c*) (aforesaid), she the said [*grantee*] doth hereby admit and acknowledge, and from the same and every part thereof, doth acquit, release, and for ever discharge the said [*grantor*], his heirs, executors, and administrators, and every of them; *And also* in consideration of the sum of ten shillings to the said [*grantee*] paid by the said [*assignee of annuity*] the receipt whereof is hereby acknowledged, *She,* the said [*grantee*], at the request and by the direction of the said [*grantor*], by these presents *doth* bargain, sell, assign, transfer, and set over, unto the said [*assignee of annuity*], his executors, administrators, and assigns, All that the annuity or clear yearly sum of £——, which in and by the (*d*) (said) indenture was granted and secured by the said [*grantor*], unto her the said [*grantee*], her executors, administrators, and assigns, for the said term of ninety-nine years, if the said [*grantor*] should so long live; *And* all future payments thereof: *And also* the collateral bond of the said [*grantor*], in the penal sum of £——, bearing even date with the (*e*) (said) indenture, and conditioned for the due payment of the said annuity; *Together* with the penalty of the same bond; *And also* the [warrant of attorney (*f*) mentioned in the (*e*) (said) indenture, and the] judgment which

8. ASSIGNMENT OF ANNUITY AND SECURITIES ON REPURCHASE, IN TRUST FOR GRANTOR.

Recital that arrears have been paid;

but that indenture hath been lost.

Testatum.

Consideration.

Nominal consideration.

Assignment by grantee by direction of grantor to assignee.

Future payments.

Collateral bond.

Warrant of attorney and judgment.

(*c*) "in the within-written indenture is mentioned," BY INDORSEMENT.

(*d*) "within-written"

(*e*) "within-written"

(*f*) The warrant of attorney is always filed on entering up the judgment.

8. ASSIGNMENT OF ANNUITY AND SECURITIES ON REPURCHASE, IN TRUST FOR GRANTOR.

hath been entered up [in pursuance thereof] in her Majesty's Court of Queen's Bench, at Westminster, in —— term, 18—, in an action of debt against the said [*grantor*], at the suit of the said [*grantee*], for the sum of £——, and costs; *Together* with all and every sums and sum of money to become due or payable thereupon; *And* all benefit and advantage to be had or derived therefrom: AND ALSO all the right, title, interest, trust, property, benefit, claim, and demand, whatsoever, both at law and in equity, of her the said [*grantee*], of, in, to, or out of the said annuity, judgment, monies, and premises, and every or any part or parcel thereof: *Together* with full power and authority for the said [*assignee of annuity*], his executors, administrators, or assigns, from time to time, to recover, receive, get in, and discharge the said annuity, monies, and premises, or any of them, or any part thereof, for or in the name or names, and as the attorney or attornies, of the said [*grantee*], her executors, administrators, or assigns, or any of them, either by action, suit, entry, distress or otherwise; To HAVE, hold, receive, perceive, take, and enjoy the said annuity, and all future payments thereof, and the said bond [warrant of attorney] and judgment, and all sum and sums of money to become due and payable, or recoverable thereupon respectively, and all benefit and advantage thereof, together with all such powers, authorities, and remedies, as aforesaid, and all other the premises, unto and by the said [*assignee of annuity*], his executors, administrators, and assigns, as and for his and their own proper monies and effects; *But* UPON TRUST for the said [*grantor*], and to be paid, applied, held, assigned, or otherwise disposed of, upon such trusts, and to and for such ends, intents, and purposes, as he the said [*grantor*] shall direct or appoint. (*Covenant against incumbrances by grantee, ut ante, p.* 125). AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and for the considerations aforesaid, *And also* in consideration of ten shillings to the said [*trustee*], before the delivery of these presents, paid by the said [*assignee of term*], the receipt whereof is hereby acknowledged, *He* the said [*trustee*], at the request and by the direction, as well of the said [*grantee*] as also of the said [*grantor*], by these presents *doth* bargain, sell, assign, transfer, and set over unto the said [*assignee of term*], his executors, administrators, and assigns, ALL and singular the several manors, messuages, lands, tenements,

All sums, &c.

All benefit, &c.

And all the right, &c.

Power of attorney to receive and recover annuity and monies.

Habendum of annuity, securities, monies, &c.

To assignee,

upon trust for grantor.

Covenant by grantee against incumbrances.

Further testatum.

Nominal consideration.

Assignment by trustee by direction of grantee and grantor to assignee.

Parcels.

8. ASSIGNMENT OF ANNUITY AND SECURITIES ON REPURCHASE, IN TRUST FOR GRANTOR.

hereditaments and premises, which in and by the (*g*) (said) indenture were demised by the said [*grantor*] unto him the said [*trustee*], for the (*g*) (said) term of —— years, or were intended so to be, with their and every of their rights, members, and appurtenances: AND ALSO all the estate, right, title, interest, term and terms of years, trust, property, possession, claim, and demand whatsoever, both at law and in equity, of him the said [*trustee*], in, to, or out of the same several manors, messuages, lands, tenements, hereditaments, and premises, and every of them, and every part and parcel thereof. TO HAVE AND TO HOLD the last-mentioned manors, messuages, lands, tenements, hereditaments, and premises, unto the said [*assignee of term*], his executors, administrators, and assigns, henceforth during all the residue of the (*h*) (said) term of —— years, created by the (*i*) (said) indenture, and which is now to come and unexpired therein: *But* UPON SUCH TRUSTS, and to and for such ends, intents, and purposes, and particularly for the raising and paying unto the said [*assignee of annuity*], his executors, administrators, or assigns, upon trust as aforesaid, the said annuity or yearly sum of £——, when in arrear, as in and by the (*i*) (said) indenture are mentioned, expressed, and declared, of and concerning the same. AND THE SAID [*trustee*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*assignee of term*], his executors, administrators, and assigns, That he the said [*trustee*] hath not at any time heretofore made, done, executed, or committed, or knowingly permitted or suffered to be made or done, any act, deed, matter or thing whatsoever, whereby or by reason or means whereof the manors, messuages, lands, tenements, hereditaments, and premises, hereby intended to be assigned, or any of them, or any part thereof, or the said term of —— years therein, are, is, can, shall, or may be impeached, charged, assigned, surrendered, or otherwise incumbered in anywise howsoever. IN WITNESS &c.

All the estate.

Habendum.

Upon trusts for securing annuity.

Covenant by trustee against incumbrances.

(*g*) "within-written" BY INDORSEMENT.

(*h*) "within-mentioned"

(*i*) "within-written"

9. ASSIGNMENT *of a* TERM *to* MERGE *as to Part of the Lands demised to secure an Annuity; and* ASSIGNMENT *of a* JUDGMENT *to a Trustee, to enable the Grantor to sell the whole of his Lands not remaining subject to the Annuity.*

9. ASSIGNMENT OF PART OF LANDS DEMISED, AND JUDGMENT.

Parties.

THIS INDENTURE, made, &c.; BETWEEN [*grantee*], of &c., of the first part; [*trustee of judgment*], of &c., of the second part; [*two trustees for sale*], of &c., of the third part; and [*grantor*], of &c., of the fourth part. (*Recital of annuity bond, ut ante*, p. 133). AND WHEREAS, by indenture of even date with the said bond, and made, &c., *In consideration* of the said sum of £——, so paid by the said [*grantee*], for the purchase of the said annuity of £——, and for better securing the due payment of the same annuity, the said [*grantor*] *did* demise unto the said [*grantee*], *The* capital messuage, &c., thereinafter particularly mentioned and described, and which had been usually granted, leased, or demised by deed or deeds, for lives or for years, determinable upon deaths, at the several ancient and accustomed yearly rents, heriots, and services thereinafter reserved; that is to say, *All that* &c. (*Except*, &c.) *To hold* the same with the appurtenances, (*except* as aforesaid, and except the said tenement, lands, and hereditaments, called [H], then in the tenure and occupation of the said [*tenant*]), unto the said [*grantee*] and his assigns, from the day of the date thereof, for the term of ninety-nine years, if the said [*grantee*] should so long live; *And to hold* the same premises called [H] aforesaid, with the appurtenances (*except* as aforesaid), unto the said [*grantee*] and his assigns, from and after the death of the said [*tenant*], for the term of ninety-nine years, if the said [*grantee*] should so long live: *Rendering* to the said [*grantor*], his heirs and assigns, the several and respective rents, *And subject* to the several and respective heriots by the indenture now in recital particularly made payable and reserved. AND WHEREAS the said [*grantor*] did in —— Term, in the —— year of the reign of her present Majesty, suffer a judgment by confession in an action of debt on

Recital of bond for payment of annuity.

Recital of demise for better securing annuity.

Parcels.

Habendum, with exception.

Habendum of part excepted, in reversion after decease of tenant for life.

Reddendum.

Recital of confession of judgment.

bond, to be signed and entered up against him in the Court of Queen's Bench at Westminster, at the suit of the said [*grantee*]. And whereas, by divers conveyances and assurances in the law, *All*, or the greater part of the manors, messuages, farms, &c. of the said [*grantor*], situate in the said counties of —— and ——, including the immediate reversion expectant on the determination of the said term of ninety-nine years, of and in the hereditaments and premises hereinafter assigned, or intended so to be, have been conveyed or otherwise assured by the said [*grantor*], *Unto*, and to the use of the said [*trustees for sale*], their heirs and assigns, *Upon trust* for sale and other trusts, for the payment and liquidation of the debts of the said [*grantor*], and the redemption or repurchase of divers of the annuities granted by him. And whereas the judgment obtained by the said [*grantee*], as hereinbefore is mentioned, is an impediment to the completion of the sales of divers of the trust estates which have been sold, and of other estates intended to be offered for sale; And the estates hereinafter mentioned, being part of the estates comprised in the said indenture of demise, have also been sold, or are intended to be offered for sale, and have as to part of them been already contracted to be sold to divers purchasers, but by reason of the said indenture and demise thereof to the said [*grantee*], the sales thereof cannot be carried into effect. And whereas, at the instance of the said [*grantor* and *trustees for sale*], the said [*grantee*] hath agreed to assign the same judgment, and the benefit thereof, (except as hereinafter is mentioned), to the said [*trustee for judgment*], his executors, administrators, and assigns, Upon the trusts hereinafter declared of the same judgment; And hath also agreed to assign the said capital messuage, &c., and several lands, &c., hereinafter mentioned, unto the said [*trustees for sale*], To the intent that the same may be merged in the freehold and inheritance of the same premises. NOW THIS INDENTURE WITNESSETH, that in consideration of ten shillings by each of them the said [*trustees for sale*] paid unto the said [*grantee*], at or before the sealing and delivery of these presents, The receipt whereof is hereby acknowledged, *He* the said [*grantee*], at the request and by the direction of the said [*grantor*], by these presents *Doth* bargain, sell, assign, transfer, and set over unto the said [*trustees for sale*], their executors, administrators, and assigns, All that, &c. And all the estate, right,

9. Assignment of part of lands demised, and judgment.

Recital, that by divers conveyances, greater part of grantor's estates were conveyed to trustees, In trust by sale to liquidate debts and repurchase annuities.

Recital that judgment is an impediment to sales;

And that part of lands demised to grantee are intended to be sold.

Recital of grantee's agreement to assign judgment as aftermentioned.

And to assign part of the lands demised to merge.

Testatum.

Assignment of part of lands demised, to merge in the inheritance.

All the estate.

9. ASSIGNMENT OF PART OF LANDS DEMISED, AND JUDGMENT.

[*Habendum.*]

title, interest, term and terms for years, property, claim, and demand whatsoever, of him the said [*grantee*], of, in, to, or out of the hereditaments and premises hereby assigned or intended so to be, and every part and parcel thereof, with their and every of their appurtenances. [To (*a*) HAVE AND TO HOLD the said hereditaments and premises unto the said [*trustees for sale*], their executors, administrators, and assigns, henceforth during all the residue and remainder of the said term of ninety-nine years, determinable as aforesaid:] *To the end and intent*, that the said term of ninety-nine years of and in the messuage, &c., hereby assigned, or intended so to be, may be merged and extinguished in the freehold and inheritance of the same premises; FREED and absolutely discharged of and from the trusts and purposes declared thereof, in and by the said indenture of the —— day of ——, and from all claims and demands in respect thereof. AND *covenant by grantee with trustees that he has not incumbered, ut ante*, p. 167).

Covenant by annuitant against incumbrances.

Further *testatum*.

AND THIS INDENTURE ALSO WITNESSETH, that in consideration of ten shillings to the said [*grantee*] paid by the said [*trustee of judgment*] at or before the delivery of these presents; The receipt whereof is hereby acknowledged:

Assignment of judgment.

He the said [*grantee*], at the like request and direction, by these presents *Doth* bargain, sell, assign, transfer, and set over unto the said [*trustee of judgment*], his executors, administrators, and assigns, ALL THAT the said judgment, obtained by the said [*grantee*], or suffered by the said [*grantor*]; *And* the full benefit thereof; *and* of all liens created by the same judgment:

And all the right, &c.

AND all the right, title, and interest, claim and demand whatsoever of him the said [*grantee*], in, to, out of, and upon the same judgment, or by reason or in respect thereof (*Except* as hereinafter is excepted).

Habendum of judgment.

TO HAVE, hold, receive, and take the said judgment, and the full benefit thereof, unto the said [*trustee of judgment*], his executors, administrators, and assigns, henceforth, as his and their own judgment, property, and effects; *With* full power and au-

With power to

Habendum informal in surrender, release of right, &c.

(*a*) An *habendum*, though a formal part of a conveyance, is rather an *informal* than a formal part of a surrender, or of a release of right; so in the above case, though the word *surrender* is not used, yet as the trustees have the immediate reversion, expectant on the determination of the estate for years, that estate merges in the reversion, and the *habendum* is therefore useless; for, as there is no continuing estate, there is *not any estate to be held*. 3 Pres. Abs. 39.

thority to and for the said [*trustee of judgment*], his executors, administrators, or assigns, to use the name or names, and act as the attorney or attornies of the said [*grantee*], his executors or administrators, in enforcing and deriving the benefit of the same judgment, and of all executions which shall be sued thereupon, and of all estates which shall be created by such executions, and the writ of liberate (*b*) thereupon; *Nevertheless* Upon the trusts, and to and for the intents and purposes hereinafter expressed and declared of and concerning the same judgment. And *it is hereby declared and agreed*, that the assignment of the said judgment and premises hereby made to the said [*trustee of judgment*], his executors, administrators, and assigns, is so made to him and them Upon trust that he or they shall, as far as may be and circumstances will permit, protect of and from the said judgment, and the lien thereof, and executions thereupon, *All* the manors, messuages, &c., now or late of the said [*grantor*], which are subject to the lien of the said judgment respectively; (*Other than and except* such of the messuages, &c., hereinbefore mentioned, as were demised to the said [*grantee*] as aforesaid, and are not hereby assigned and merged, or intended so to be); *And also* the purchasers and other owners for the time being of the same manors, &c. (except as aforesaid): And for that purpose shall stand and be possessed of the same judgment, and the benefit thereof, so far as the same relates to or concerns the same manors, &c. respectively (except as aforesaid), In trust for the purchaser or purchasers, and other owner or owners for the time being of the said manors, &c. respectively (except as aforesaid): *And subject thereto*, shall stand and be possessed of the said judgment and the benefit thereof; In trust for the said [*grantee*], his executors, administrators, and assigns. Provided always, that nothing herein contained shall prevent the said [*grantee*], his executors, administrators, or assigns, from enforcing the lien of the said judgment, or issuing an execution or executions thereon, against the lands, tenements, goods, and chattels of the said [*grantor*], *Save and except* his said lands and tenements in the said counties of —— and ——, which are not included in and demised by the said indenture of the —— day of ——; *And also save*

9. ASSIGNMENT OF PART OF LANDS DEMISED, AND JUDGMENT.

sue in grantee's name.

Declaration of

trust of judgment;

to protect all grantor's lands,

(except premises not assigned by grantee),

and the purchasers thereof.

Subject thereto,

In trust for grantee.

Proviso that assignment is not to prevent annuitant from suing execution against residue of lands.

(*b*) As to the writ of *liberate*, see 2 Tidd's Practice, 1116, 7th Ed. Wms. n., 2 Saund. 70 c, 4th Ed. Liberate.

9. ASSIGNMENT OF PART OF LANDS DEMISED, AND JUDGMENT.

and except so much and such parts of the lands, tenements, and hereditaments, included and comprised in the lastly mentioned indenture, as are hereby assigned and merged, or intended so to be, with the appurtenances. AND THE SAID [*grantee*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*trustee of judgment*], his executors, administrators, and assigns, that he the said [*grantee*], his executors or administrators, upon the request of the said [*trustee of judgment*], [*grantor,*] [*trustees for sale*], or any of them, or the heirs, executors, administrators, or assigns of them or any of them, will or shall, at the costs and charges of the person or persons requiring the same, make, do, and execute, or cause and procure to be made, done, and executed, all such further and other lawful acts, deeds, assignments, powers, authorities, and other assurances, whatsoever, for the further, better, more perfectly, lawfully, and absolutely or satisfactorily assigning or assuring unto or vesting in the said [*trustee of judgment*], his executors, administrators, or assigns, and empowering him or them to receive and obtain the judgment hereby assigned, or intended so to be, and the full benefit thereof, (except as aforesaid), Upon the trusts, and for the ends, intents, and purposes, and under and subject to the declarations and agreements hereinbefore expressed and contained of and concerning the same; *As* by the said [*trustee of judgment*], his executors, administrators, or assigns, or the said [*grantor and trustees for sale*], or any of them, or the heirs or assigns of them or any of them, shall be reasonably devised or advised, and required and tendered to be made, done, and executed. PROVIDED ALWAYS, that nothing in these presents contained shall be considered or taken to release, exonerate, or discharge the hereditaments and premises comprised in and demised by the said indenture of the —— day of ——, (*except* such of the said hereditaments as are hereinbefore assigned or merged), of and from the said annuity or yearly sum of £—— secured to the said [*grantee*] as aforesaid, nor to prejudice or affect any security which he now holds for the said annuity, besides the said judgment expressed to be hereby assigned, so far as such security affects or concerns the same hereditaments and premises, (except as aforesaid), or any of them. IN WITNESS &c.

Covenants by grantee for further assurance.

Proviso that assignment is not to release residue of lands from annuity, or to prejudice any other security.

10. BOND *for securing an* ANNUITY *for the* GRANTOR'S LIFE; *without any other Security, and either* REPURCHASEABLE *or not.*

10. BOND ONLY, FOR GRANTOR'S LIFE, REPURCHASEABLE.

KNOW ALL MEN *by these presents,* that I [*obligor*], of &c., am held and firmly bound to [*obligee*], of &c., [*yeoman*], in the sum of [*double the purchase-money*], of lawful British money, to be paid to the said [*obligee*], or to his certain attorney, executors, administrators, or assigns: *For* which payment to be well and truly made, I bind myself, my heirs, executors, and administrators, and every of them, firmly by these presents; *Sealed* with my seal: DATED this —— day of ——, 18—.

Obligation from one to one.

WHEREAS the above-named [*obligee*] hath contracted with the above-bounden [*obligor*], for the purchase of an annuity of £——, to be paid to the said [*obligee*], his executors, administrators, and assigns, during the life of the said [*obligor*], for the price of £——; AND which sum of £—— the said [*obligee*] hath, on the day of the date of the above-written bond or obligation, paid to the said [*obligor*], which he the said [*obligor*] doth hereby admit and acknowledge.

Recital of contract for purchase.

Recital of payment.

NOW THE CONDITION of the above-written bond or obligation is such, that if the said [*obligor*] should well and truly pay or cause to be paid unto the said [*obligee*], his executors, administrators, or assigns, during the life of him the said [*obligor*], *One* annuity or yearly sum of £——, of lawful British money, free from taxes, and clear of all other deductions whatsoever, by equal quarterly payments, on the —— day of ——, &c., in every year; the first payment thereof to be made on the —— day of —— next ensuing the date of the above-written bond: AND ALSO, if the heirs, executors, or administrators of the said [*obligor*] should well and truly pay unto the said [*obligee*], his executors, administrators, or assigns, in case the said [*obligor*] should depart this life on any day on which any quarterly payment of the said annuity or yearly sum of £—— shall become due, the whole of such quarterly payment; *And* if on any other day, in case such

Condition, payment of annuity,

and proportional part.

10. BOND ONLY, FOR GRANTOR'S LIFE, REPURCHASEABLE.

day should happen before any quarterly payment of the said annuity or yearly sum shall have become due, Then a proportional part (*a*) of the quarterly payment of the said annuity or yearly sum of £——, to be computed from the day of the date of the above-written bond or obligation to the day of the death of the said [*obligor*]; *But* in case any quarterly payment of such annuity or yearly sum of £—— should have become due at the time of the decease of the said [*obligor*], then from such of the said quarterly days of payment, as shall happen to be next and immediately preceding the day of the death of the said [*obligor*], to the day of his decease; *Then* the above-written bond or obligation shall be void and of no effect, otherwise shall be and remain in full force and virtue (*b*).

SEALED AND DELIVERED in the presence of }

(*a*) [*Vide ante*, p. 60.]

ANNUITY REPURCHASEABLE.

(*b*) If the annuity be re-purchaseable, add,

Declaration enabling grantor to repurchase, on giving six months' notice, and repaying original purchase-money, and half a year's annuity in advance.

"AND if the said [*obligor*] should at any time [after the expiration of three years from the date of the above-written bond or obligation] give unto the said [*obligee*], his executors, administrators, or assigns, notice in writing, by the space of six calendar months, of his intention to repurchase the said annuity or yearly sum of £——; and should at the end of the said six calendar months from the time such notice shall be given as aforesaid, pay unto the said [*obligee*], his executors, administrators, or assigns, all and every sum and sums of money whatsoever that shall then be due for the arrears of the said annuity, together with a proportional part thereof from the last day of payment preceding such repurchase, up to the day of repurchasing the same as aforesaid; and also the sum of £—— and £——, being the original purchase-money of the said annuity, and half of a year's annuity in advance, as and in full for the repurchase of the said annuity or yearly sum of £—— above secured*; *Then*

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* [J. The terms upon which an annuity should be allowed to be redeemed depend of course upon agreement; and, strictly speaking, a grantee has no right to complain of this more than any other term of the contract; but it may be observed, that if a sum of money is to be paid in addition to the original purchase-money as the price of redemption, (and some addition may fairly be asked as a compensation for the

10. BOND ONLY, FOR GRANTOR'S LIFE, REPURCHASEABLE.

and in such case the said annuity or yearly sum of £—— shall cease and determine, and be no longer paid or payable, and the above-written bond or obligation shall be void and of no effect."

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loss of interest which the grantee may sustain before the money is again invested), a long notice ought not to be required, such notice being often very inconvenient to the grantor, and of not much advantage to the grantee, as the latter cannot calculate with certainty on the money being forthcoming at the time. To make the annuity redeemable after a given period, on seven days' notice and one quarter's payment in addition to the original purchase-money, seems to be a fair stipulation. J.]

As to the terms of redemption.

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11. BOND *for securing an* ANNUITY *for the life of the survivor of* NOMINEES, *either without any other Security, or with a* WARRANT OF ATTORNEY *to confess Judgment on the Bond; and* REPURCHASEABLE *either by* ONE PAYMENT, *or* BY INSTALMENTS.

11. BOND ONLY, OR WITH WARRANT OF ATTORNEY, FOR NOMINEES' LIVES, REPURCHASEABLE BY INSTALMENTS.

KNOW ALL MEN, &c. (*obligation, ut ante*, p. 173).

Obligation.

WHEREAS the above-named [*obligee*] hath contracted with the above-bounden [*obligor*], for the purchase of an annuity of £—— lawful British money, to be paid to the said [*obligee*], his executors, administrators, and assigns, during the lives of [*nominees*], of &c., and the [lives and] life of the [survivors and] survivor of them, for the price of £——.

Recital of contract for purchasing annuity.

AND WHEREAS upon the treaty for the purchase of the said annuity, it was agreed that the same should be secured by the bond or obligation of the said [*obligor*] [and by his warrant of attorney to confess a judgment thereon in her Majesty's Court of Queen's Bench, at Westminster.] AND WHEREAS the said [*obligee*] hath, on the day of the date of the above-written bond or obligation, paid to the said [*obligor*] the said sum of £——, which he the said [*obligor*] doth hereby acknowledge.

To be secured by obligor's bond (and warrant of attorney), at obligor's expense. And payment of consideration money.

NOW THE CONDITION of the above-written bond or obligation is such, that if the said [*obligor*], his heirs, exe-

Condition for payment of annuity.

11. BOND ONLY, OR WITH WARRANT OF ATTORNEY, FOR NOMINEES' LIVES, REPURCHASEABLE BY INSTALMENTS.

cutors or administrators, should well and truly pay unto the said [*obligee*], his executors, administrators, or assigns, during the lives of the said [*nominees*], and the [lives and] life of the [survivors and] survivor of them, One annuity or yearly sum of £——, lawful British money, free from taxes, and clear of all other deductions whatsoever, on four days or times in the year, that is to say, on the —— day of ——, &c., in every year, by equal portions; the first payment thereof to be made on the —— day of —— next ensuing the day of the date of the above-written bond or obligation;

and proportional part.

And also, if the said [*obligor*], his heirs, executors, or administrators, should well and truly pay, unto the said [*obligee*], his executors, administrators, or assigns, in case the survivor of them the said [*nominees*] should happen to depart this life on any day on which any quarterly payment of the said annuity or yearly sum of £—— shall become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said annuity shall have become due, then a proportional part of the quarterly payment of the said annuity, to be computed from the day of the date of the above-written bond or obligation, to the day of the death of the survivor of them the said [*nominees*]; *But* in case any quarterly payment of such annuity should have become due at the time of the decease of the survivor of them the said [*nominees*], then from such of the said quarterly days of payment as shall happen to be next and immediately preceding the day of the death of the survivor of them the said [*nominees*], to the day of the death of such survivor; *Then* the above-written bond or obligation shall be void, and of no effect (*a*).

REPURCHASEABLE. *by one payment;*

(*a*) If the annuity be re-purchaseable by one payment, add *ut ante*, p. 174; adding, after the name of the *obligor*,

"his heirs, executors, or administrators."

And adding, after the name of the *obligee*,

"his executors, administrators, or assigns."

by instalments.

If the annuity be re-purchaseable at one time, *or* by instalments, add,

[Recital of agreement for repurchase of the whole at one time, or by instalments, giving three

"And [whereas upon the treaty for the purchase of the said annuity, it was agreed between the said [*obligor*] and [*obligee*], that the said [*obligor*], his heirs, executors, administrators, or assigns, should at any time or times thereafter be at liberty to repurchase the said annuity, or any part

11. BOND ONLY, OR WITH WARRANT OF ATTORNEY, FOR NOMINEES' LIVES, REPURCHASEABLE BY INSTALMENTS.

thereof, not being less at any one time than £10 per annum, at the rate or price of £70 for the purchase of every £10, and so in proportion for any larger sum, upon giving the said [*obligee*], his executors, administrators, or assigns, three months' previous notice of such his or their intention to repurchase the said annuity, or any part thereof, until the whole of the said annuity should be redeemed. Now] IT IS HEREBY DECLARED, That in case the said [*obligee*], his executors, administrators, or assigns, should at any time or times hereafter be minded and desirous of repurchasing the said annuity or yearly sum of £——, or any part thereof, not being less at any one time than £10 per annum; and of such his or their intention should give unto the said [*obligee*], his executors, administrators, or assigns, three months' previous notice in writing, of what part of the said annuity the said [*obligor*], his heirs, executors, or administrators, shall be desirous of repurchasing, not being less at any one time than £10 per annum, *Then* he, the said [*obligee*], his executors, administrators, or assigns, will or shall, from time to time, on receiving such sum and sums of money as shall be due for the said annuity, and all arrears thereof, upon the day of repurchasing such part or parts thereof, at the expiration of such three months from the time of giving such notice or notices, accept, receive, and take £70 for the repurchase of £10 per annum of the said annuity, and so in proportion for any larger sum that shall be expressed in such notice or notices, and shall be so desired to be paid off as aforesaid: AND on receiving such repurchase-money for any such part or parts of the said annuity as aforesaid, that he the said [*obligee*], his executors, administrators, or assigns, will or shall, from time to time, at the request, costs, and charges of the said [*obligor*], his heirs, executors, administrators, or assigns, execute such reasonable and proper assignments or declarations of trust, of such part or parts of the said annuity as shall be so repurchased, unto or in favour of the said [*obligor*], his heirs, executors, administrators, or assigns, or of such person or persons as he or they shall direct or appoint; *Or* otherwise will or shall, from time to time, release and discharge the said [*obligor*], his heirs, executors, administrators, and assigns, from the payment of such part or parts of the said annuity as shall be so repurchased as aforesaid: AND on re-

months' notice].

Declaration, giving the obligor a right to repurchase by instalments.

11. BOND ONLY, OR WITH WARRANT OF ATTORNEY, FOR NOMINEES' LIVES, REPURCHASEABLE BY INSTALMENTS.

ceipt of the whole of the money for the repurchase of the said annuity or yearly sum of £——, and all arrears of the said annuity, and such proportional part thereof as aforesaid, the said [*obligee*], his executors, administrators, or assigns, will or shall deliver to the said [*obligor*], his heirs, executors, administrators, or assigns, the above-written bond or obligation, to be cancelled and destroyed [and acknowledge, or cause to be acknowledged, satisfaction on the record of the judgment to be entered up by virtue of the said warrant of attorney] ; or otherwise assign the same [respectively] in such manner as he or they shall direct and appoint."

SEALED AND DELIVERED by the above-named [*obligor*], and [*obligee* (*b*)], in the presence of

Bond having mutual agreement not mentioned elsewhere, should be executed by obligee.

(*b*) When there is any mutual agreement in a bond (such as the above for repurchase by instalments), requiring something to be done by the obligee, and which is not mentioned in some collateral instrument executed by the obligee, he should execute the bond ; and the obligor should have an *examined* copy of it, at the least.

12. BOND ONLY, WITH SURETY, REPURCHASEABLE.

12. BOND *for securing an* ANNUITY *for the* GRANTOR'S LIFE, *with a* SURETY (*a*) ; *Annuity* REPURCHASEABLE *by the Grantor, or by his Surety.*

Obligation from two to one.

KNOW ALL MEN *by these presents,* That *We* [*obligor*], of &c., and [*surety*], of &c., are held and firmly bound to [*obligee*], of &c., in the sum of £——, to be paid to the said [*obligee*] or to his certain attorney, executors, administrators, or assigns: For which payment to be well and faithfully made, We bind ourselves and each of us, and the heirs, executors, and

(*a*) [As to the rights and liabilities of a surety for the payment of an annuity, *vide ante*, p. 52.]

administrators of us and of each of us, and every of them, jointly and severally, firmly by these presents, *Sealed* with our seals: DATED &c.

12. BOND ONLY, WITH SURETY, RE-PURCHASABLE.

WHEREAS the above-named [*obligee*] hath agreed with the above-bounden [*obligor*] for the purchase of an annuity of £——, to be paid to the said [*obligee*], his executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever, during the life of the said [*obligor*], for the price of £——; *And* which sum of £—— the said [*obligee*] hath on the day of the date of the above-written bond or obligation paid to the said [*obligor*], as he the said [*obligor*] doth hereby acknowledge. AND WHEREAS the above-bounden [*surety*] hath agreed to join with the said [*obligor*] in the above-written bond or obligation, subject to the condition hereunder written, as the surety of the said [*obligor*], for the due payment of the said annuity:

Recital of contract for purchase.

Payment of consideration money, and surety's agreement to join.

NOW THEREFORE THE CONDITION of the above-written bond or obligation is such, That if the said [*obligor*] and [*surety*], or either of them, or the heirs, executors, or administrators of them or of either of them, should pay unto the said [*obligee*], his executors, administrators, or assigns, during the life of him the said [*obligor*], *One* annuity or yearly sum of £—— of lawful British money, free from taxes and clear of all other deductions whatsoever, by equal quarterly payments, on &c. in every year; the first payment to be made on the —— day of —— next ensuing the date of the above-written bond or application, if the said [*obligor*] should be then living: AND ALSO if the heirs, executors, or administrators of the said [*obligor*], or the said [*surety*], his heirs, executors, or administrators, or any or one of them, should pay unto the said [*obligee*], his executors, administrators, or assigns, in case the said [*obligor*] should depart this life on any day on which any quarterly payment of the said annuity shall become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said annuity shall become due, then a proportional part of the quarterly payment of the said annuity, to be computed from the day of the date of the above-written bond or obligation to the day of the death of the said [*obligor*]; *But* in case any quarterly payment of such annuity should have become due at

Condition: Payment of annuity,

and proportional part.

12. BONDONLY, WITH SURETY, RE-PURCHASABLE.

the time of the decease of the said [*obligor*], then from such of the said quarterly days of payment as shall happen to be next and immediately preceding the day of the death of the said [*obligor*], to the day of his decease: *Then* the above-written bond or obligation shall be void and of no effect; *Otherwise* shall be and remain in full force and virtue. (*If the annuity be repurchasable, add*), AND in case the said [*obligor*], or the said [*surety*], his heirs, executors, or administrators, or any of them, should at any time hereafter be minded and desirous of re-purchasing or buying up the said annuity or yearly sum of £——: and of such, his, their, or either of their intention should give up unto the said [*obligee*], his executors, administrators, or assigns, notice in writing by the space of seven days, and should, at the expiration of the time to be mentioned in such notice, pay or cause to be paid unto the said [*obligee*], his executors, administrators, or assigns, the sum of £—— of lawful British money, being the original purchase-money for the said annuity and one quarter of a year's annuity in advance; together with all and every such sum and sums of money as shall be then due for the arrears of the said annuity; and together also with a proportional part of the same annuity from the last day of payment thereof preceding such re-purchase, up to and including the day of re-purchasing the same, as and in full for the re-purchase of the said annuity or yearly sum of £——; *Then*, and in such case, if such re-purchase should be made by the said [*obligor*], the said annuity shall cease and determine, and be no longer paid or payable; and the above-written bond or obligation shall be void and of no effect: *But* if such re-purchase should be made by the said [*surety*], his heirs, executors, or administrators, the said annuity shall continue for his or their benefit, and the said bond or obligation shall be assigned to him or them, or to such person or persons as he or they shall direct or appoint, *subject* to the like right of the said obligor to re-purchase the same.

RE-PURCHASABLE.

Agreement for re-purchase, on seven days' notice, and paying original purchase-money and one quarter's annuity.

If annuity be purchased by surety, annuity to continue for his benefit.

SEALED AND DELIVERED, (*ut ante*, p. 178) (*b*).

Examined copy of bond.

(*b*) *Vide ante*, p. 178, n. (*b*.) The surety should have an *examined* copy of this bond, as well as the principal.

13. BOND *for securing an* ANNUITY *for the* OBLIGOR'S LIFE, *to* TWO *Obligees,* IN COMMON (*a*), *without any other Security; Annuity* REPURCHASABLE *or not.*

13. BOND ALONE, TO TWO AS TENANTS IN COMMON, RE-PURCHASABLE,

Obligation fromone to two.

KNOW ALL MEN *by these presents,* That I [*obligor*], of &c., am held and firmly bound to [*obligee*], of &c.; and [*other obligee*], of &c.; in the sum of £—— of lawful British money, to be paid to the said [*obligee*] and [*other obligee*], as tenants in common, or their respective attornies, executors, administrators, or assigns: *For* which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents, *Sealed* with my seal: DATED &c.

Recital of purchase of annuity by two obligees as tenants in common.

WHEREAS the above-named [*obligees*] have contracted with the above-bounden [*obligor*], for the purchase of an annuity of £——, to be paid to the said [*obligees*] respectively, as tenants in common, their respective executors, administrators, and assigns, during the life of him the said [*obligor*], for the price of £——. AND WHEREAS the said [*obligees*] have, on the day of the date of the above-written bond or obligation, paid to the said [*obligor*] the said sum of £——; which he the said [*obligor*] doth hereby acknowledge.

Recital of paying consideration money.

Condition, payment of annuity,

NOW THEREFORE THE CONDITION of the above-written bond or obligation is such, that if the said [*obligor*] should well and truly pay or cause to be paid, unto the said [*obligees*] respectively, in equal shares and proportions, as tenants in common, their respective executors, administrators, or assigns, for and during the natural life of him the said [*obligor*], *One* annuity or yearly sum of £—— of lawful British money, free from taxes, and clear of all other deductions whatsoever, by equal quarterly payments, on &c., in every year, the first payment thereof to be made on the —— day of ——, next ensuing the day of the date of the above-written bond or obligation; AND ALSO, if the heirs, executors, or administrators of the said [*obligor*] should well and

(*a*) [See *Lane* v. *Drinkwater*, 1 Cr., M. & R. 599, and note to precedent, No 31, *infra*. As to obligations to a plurality of persons *severally*, *vide post*, title BOND.]

13. BOND ALONE, TO TWO AS TENANTS IN COMMON, RE-PURCHASABLE.

truly pay, or cause to be paid, unto the said [*obligees*] respectively, in equal shares and proportions, as tenants in common, their respective executors, administrators, or assigns, in case the said [*obligor*] should depart this life on any day on which any quarterly payment of the said annuity shall become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said annuity or yearly sum of £—— shall have become due, then a proportional part of the quarterly payment of the said annuity, to be computed from the day of the date of the above-written bond or obligation, to the day of the death of the said [*obligor*]; *But* in case any quarterly payment of such annuity should have become due at the time of the decease of the said [*obligor*], then from such of the said quarterly days of payment, as shall happen to be next and immediately preceding the day of the death of the said [*obligor*], to the day of his decease, *Then* the above-written bond or obligation shall be void and of no effect. (*If the annuity be repurchasable, add*), AND IT IS HEREBY DECLARED, that in case the said [*obligor*] should at any time hereafter be desirous of re-purchasing the said annuity or yearly sum of £——, and of such intention should give unto the said [*obligees*], their executors, administrators, or assigns, notice in writing by the space of seven days, that they the said [*obligees*], their executors, administrators, or assigns, will or shall, at the end of the said seven days from the time such notice shall be given as aforesaid, on receiving in equal shares and proportions all and every sum or sums of money that shall be due for the arrears of the said annuity, together with a proportional part thereof from the last day of payment preceding such re-purchase, up to and until re-purchasing the same as aforesaid, accept, receive, and take the said sum of £——, to be paid to them in equal shares and proportions, as and in full for the re-purchase of the said annuity or yearly sum of £——: AND, on receipt of the said sum of £——, and all arrears of the said annuity, and such proportional part thereof in manner aforesaid, will or shall deliver the above-written bond or obligation to the said [*obligor*], to be cancelled; *And then*, and in such case, the said annuity or yearly sum of £—— shall cease, determine, and be no longer payable (*d*).

and proportional part.

Declaration as to re-purchase.

Examined copy of bond.

(*d*) *Vide ante*, p. 178, n. (*b*), as to examined copy.

14. BOND *for securing an* ANNUITY *in consideration of* RELINQUISHING *a* BUSINESS (*a*).

14. BOND FOR ANNUITY FOR RELINQUISHING TRADE.

KNOW ALL MEN, &c., (*obligation, ut post*, p. 184.) Obligation.

WHEREAS the above-named [*obligee*] hath for many years heretofore carried on the trade or business of a surgeon and apothecary, and hath established a considerable practice and connection in the said trade or business, within the liberties of London and Westminster. AND WHEREAS the said [*obligee*] hath agreed to resign to or in favour of the said [*obligor*] the said business, so established by him as aforesaid, in consideration of an annuity or yearly sum of £——, to be paid by the said [*obligor*], his heirs, executors, or administrators, to the said [*obligee*] and his assigns, during his life, at the times hereinafter mentioned. AND WHEREAS in pursuance of such agreement, by indenture (*b*) bearing even date with the above-written bond or obligation, and made between the said [*obligee*], of the one part; and the said [*obligor*], of the other part; the said [*obligee*] hath granted and yielded up unto the said [*obligor*], the liberty or privilege of carrying on the trade or business of a surgeon and apothecary heretofore carried on in the liberties of London and Westminster by the said [*obligee*], in the room and as the successor of the said [*obligee*], and all the benefit, profit, emolument, and advantage to arise therefrom; AND hath, by such indenture, entered into covenants with the said [*obligor*], for recommending and introducing the patients of the said [*obligee*] to the said [*obligor*], and for preventing the said [*obligee*] from exercising the said trade or business within the liberties of London and Westminster, or within ten miles from the same;

Recital of establishing trade.

Recital of agreement to resign, in consideration of annuity.

Recital of assignment of business.

Covenant to recommend obligor,

and not to practise within certain limits.

NOW THE CONDITION of the above-written bond or

Condition for payment of annuity.

(*a*) [That the instrument creating or securing such an annuity as this need not be enrolled, *vide ante*, p. 107.]

(*b*) See the form, *infra*, p. 194.

14. BOND FOR ANNUITY FOR RELINQUISHING TRADE.

obligation is such, that if the above-bounden [*obligor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the said [*obligee*], or his assigns, during his life, *One* annuity or yearly sum of £—— of lawful British money, free from taxes, and without any deduction whatsoever, by equal half-yearly payments, on &c., in each and every year; the first half-yearly payment thereof to be made on the —— day of —— next ensuing the date of the above-written bond or obligation: AND ALSO if the said [*obligor*], his heirs, executors, or administrators, should, within twenty days next after the decease of the said [*obligee*], well and truly pay or cause to be paid unto the executors, administrators, or assigns of the said [*obligee*], a proportional part of the said annuity, for the time which at his decease shall have elapsed of the half-yearly payment thereof then growing due, *Then* the above-written bond or obligation shall be void and of no effect.

And proportional part.

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15. BOND FOR ANNUITY, IN CONSIDERATION OF AN ESTATE.

15. BOND *for securing an* ANNUITY *for the* OBLIGEE'S LIFE, *in Consideration of a Conveyance and Surrender of Freehold and Copyhold Premises.*

Obligation from one to one.

KNOW ALL MEN *by these presents,* That I [*obligor*], of &c., am held and firmly bound to [*obligee*], of &c., in the sum of £—— of lawful British money, to be paid to the said [*obligee*], or to his certain attorney, executors, administrators, or assigns; *For* which payment to be well and truly made, I bind myself, my heirs, executors, and administrators, and every of them, by these presents, *Sealed* with my seal: DATED &c.

Recital of contract for purchasing annuity in consideration of conveyance and surrender of freehold and copyhold premises.

WHEREAS the above-bounden [*obligor*] hath agreed with the above-named [*obligee*], to grant to him and his assigns, an annuity of £——, for his life: AND the consideration for the purchase of the said annuity, is a conveyance and surrender, made or to be made by the said [*obligee*] to the said [*obligor*], his heirs and assigns, of certain freehold and

15. BOND FOR ANNUITY, IN CONSIDERATION OF AN ESTATE.

copyhold messuages, lands, and hereditaments, of him the said [*obligee*], situate in the parish of ——, or elsewhere in the county of —— (*a*).

Condition for paying annuity for obligee's life.

NOW THE CONDITION of the above-written bond or obligation is such, that if the said [*obligor*], his heirs, executors, or administrators, should, from time to time, during the natural life of the said [*obligee*], well and truly pay unto the said [*obligee*], or his assigns, *One* annuity or clear yearly sum of £—— of lawful British money, to commence, or be considered as commencing, from the —— day of —— next preceding the date of the above-written bond, by equal half-yearly payments, on &c., in every year, clear of all deductions on any account whatsoever: and should make the first payment of the said annuity on the —— day of —— next ensuing the date of the said bond or obligation, *provided* the said [*obligee*] should be then living; *And* in the event of the death of the said [*obligee*], between or in the interval of any of the said half-yearly days of payment, and either before or after the said —— day of —— next, then if the said [*obligor*], his heirs, executors, or administrators, should well and truly pay unto the executors, administrators, or assigns of the said [*obligee*], [as part of his personal estate], such part of the said annuity of £—— as shall be in proportion to the time or number of days which, inclusive of the day of the decease of the said [*obligee*], shall have elapsed prior to his decease, and after the day of payment next and immediately preceding that event, or, as the case shall require, next after the —— day of —— last, if the said [*obligee*] should die prior to the —— day of —— next: AND if the said [*obligor*], his heirs, executors, or administrators, should pay such proportional part of the said annuity of £——, as soon after the decease of the said [*obligee*] as demand shall be made thereof by the executors, administrators, or assigns of the said [*obligee*], and clear of all deductions whatsoever, *Then* the above-written bond or obligation shall be void and of no effect; or otherwise shall be and remain in full force and effect.

With proportional part to his decease.

(*a*) That no memorial of the securities in a similar case to the above is requisite, *vide ante*, p. 107.

Memorial not necessary.

16. BOND, WITH COLLATERAL SECURITIES, RE-PURCHASABLE.

16. BOND *for securing an* ANNUITY; *collaterally secured by a Grant and Demise, and a Warrant of Attorney; re-purchasable after the Expiration of three Years, on giving three Months' Notice.*

Obligation.

KNOW ALL MEN *by these presents, (obligation, ut ante,* p. 184).

Recital of contract for purchase of annuity, subject to be re-purchased

WHEREAS the above-bounden [*grantor*] hath agreed with the above-named [*grantee*], to grant to him, his executors, administrators, and assigns, an annuity of £——, for the term of ninety-nine years, if the said [*grantor*] should so long live, subject nevertheless to be repurchased on the terms

Consideration.

expressed in the conditions hereunder written: AND the consideration to be given for the purchase of the said annuity is

Payment.

the sum of £——: AND the said [*grantee*] hath, on the day of the date of the above-written bond or obligation, paid to the said [*grantor*] the sum of £—— in notes of the Governor and Company of the Bank of England, payable to bearer on demand, as the consideration for the grant of the

Reference to collateral securities.

said annuity: AND WHEREAS on the contract for the said purchase it was agreed, that for better securing the payment of the said annuity, the said [*grantor*] should execute an indenture of grant and demise relating thereto, which is already prepared and engrossed, and is intended to bear even date with the above-written obligation, and is expressed to be made between the said [*grantor*], of the first part; the said [*grantee*], of the second part; and [*trustee*], of &c., of the third part; *And* that the same annuity should be further secured by the above-written bond or obligation; *And also* by a warrant of attorney to confess judgment thereon.

Condition, payment of annuity;

NOW THE CONDITION of the above-written bond or obligation is such, that if the said [*grantor*] should from time to time during the said term of ninety-nine years, if the said [*grantor*] should so long live, or until the re-purchase of the said annuity, according to the provision hereinafter contained, which shall first happen, well and truly pay unto the said [*grantee*], his executors, administrators, or assigns,

16. BOND, WITH COLLATERAL SECURITIES, RE-PURCHASABLE.

One annuity or clear yearly sum of £—— of lawful British money, by equal quarterly payments, to be made on the —— day of ——, &c., in every year, and clear of all deductions on any account whatsoever: And should make the first quarterly payment of the said annuity on the —— day of —— next ensuing the date of the said bond or obligation; provided the said [*grantor*] should be then living: And in the event of the death of the said [*grantor*], or in the interval between any two of the said quarterly days of payment, and either before or after the said —— day of —— next, then if the heirs, executors, or administrators of the said [*grantor*], should also upon demand well and truly pay unto the said [*grantee*], his executors, administrators, or assigns, a proportional part of the said annuity of £——, for the time which, inclusive of the day of the decease of the said [*grantor*], shall have elapsed prior to his decease, and after the day of payment next preceding that event: Or if the said [*grantor*], or his assigns, should at any time after the expiration of three years, to be computed from the day of the date of the above-written bond or obligation, be desirous of re-purchasing the said annuity of £——; and should give the said [*grantee*], his executors, administrators, or assigns, three calendar months' notice in writing of such his or their desire; and should upon the expiration of the said notice, or at any time afterwards, upon giving three calendar months' such notice as aforesaid, well and truly pay unto the said [*grantee*], his executors, administrators, or assigns, the sum of £—— of lawful British money; *and also* all and every sum and sums of money which shall be then due for or on account of the arrears of the said annuity of £——, and also a proportional part of the same annuity, up to and inclusive of the day of re-purchasing the same; *and* all sums of money, if any, which shall be then due for or on account of any costs, charges, or expenses, occasioned by the non-payment of the said annuity: *Then,* and in either of the said cases, the above-written bond or obligation, and also the said warrant of attorney, shall be delivered up to be cancelled, or be cancelled and satisfaction acknowledged on the record of the said judgment to be entered up as aforesaid under the authority of the said warrant of attorney.

and proportional part.

And payment of re-purchase-monies.

17. BOND, WITH COLLATERAL SECURITIES, AND TWO SURETIES, RE-PURCHASABLE.

17. BOND *for securing an* ANNUITY *for the* GRANTOR'S LIFE, *collaterally secured by a Deed of Covenants and a Warrant of Attorney to confess Judgment, in which* TWO SURETIES *join;* RE-PURCHASABLE *by the Grantor or by the Sureties, on giving Six Months' Notice, and repaying the Purchase-Money, or on giving Seven Days' Notice, and paying half a Year's Annuity in addition to the Purchase-Money.*

Obligation from three to one.

KNOW ALL MEN *by these presents,* that We [*grantor*], of &c., [*surety*], of &c., and [*other surety*], of &c., are held and firmly bound to [*grantee*], of &c., in the sum of £—— of lawful British money, to be paid to the said [*grantee*], or to his certain attorney, executors, administrators, or assigns: *For* which payment to be well and truly made, we bind ourselves and each of us, and any two of us (*a*), and the heirs, executors, and administrators of us and each of us, and any two of us, jointly, and severally and respectively, firmly by these presents, *Sealed* with our seals: DATED &c.

Recital of contract for purchase.

WHEREAS the above-named [*grantee*] hath contracted and agreed with the above-bounden [*grantor*], for the purchase of one annuity or yearly sum of £——, to be paid to the said [*grantee*], his executors, administrators, and assigns, during the life of the said [*grantor*], at the price of £——.

Reference to collateral securities.

AND WHEREAS upon the treaty for the purchase of the said annuity, it was agreed that the same should be secured by a deed of covenants, of even date with the above-written bond or obligation; also by the bond and warrant of attorney of the said [*grantor*] and [*sureties*], who have agreed to join therein as sureties for the due payment of the said annuity.

Recital of paying consideration.

AND WHEREAS the said [*grantee*] hath, on the day of the date of the above-written bond or obligation, paid to the said [*grantor*] the said sum of £——, which he the said [*grantor*] doth hereby admit and acknowledge.

(*a*) [As to the use of these words, see title BOND.]

17. BOND, WITH COLLATERAL SECURITIES, AND TWO SURETIES, RE-PURCHASABLE.

NOW THE CONDITION of the above-written bond or obligation is such, that if the said [*grantor*], [*surety*], and [*other surety*], or any or one of them, or the heirs, executors, or administrators of them or any or one of them, should well and truly pay unto the said [*grantee*], his executors, administrators, or assigns, during the life of the said [*grantor*], *One* annuity or yearly sum of £—— of lawful British money, free from taxes, and clear of all other deductions whatsoever, by equal quarterly payments, on the —— day of ——, &c., in every year; the first payment thereof to be made on the —— day of —— next ensuing the date of the above-written bond or obligation: AND ALSO, if the heirs, executors, or administrators of the said [*grantor*], or the said [*sureties*], or either of them, or the heirs, executors, or administrators of them or either of them, should well and truly pay unto the said [*grantee*], his executors, administrators, or assigns, in case the said [*grantor*] should happen to depart this life on any day on which any payment of the said annuity shall become due, the whole of such payment; *And* if on any other day, in case such day should happen before any payment of the said annuity shall have become due, then a proportional part of the said annuity, to be computed from the day of the date of the above-written bond or obligation to the day of the death of the said [*grantor*]; *But* in case any payment of the said annuity should have become due at the time of the decease of the said [*grantor*], then from such of the said days of payment as shall happen to be next and immediately preceding the day of the decease of the said [*grantor*], to the day of his decease, *Then* the above-written bond or obligation shall be void and of no effect.

Condition for payment of annuity,

and proportional part.

AND IT IS HEREBY FURTHER DECLARED, That in case the said [*grantor and sureties*], or any or one of them, or the heirs, executors, or administrators of the said [*sureties*], or either of them, should at any time hereafter be desirous of re-purchasing the said annuity, and of such their or his intention should give unto the said [*grantee*], his executors, administrators, or assigns, six calendar months' notice in writing, he the said [*grantee*], his executors, administrators, or assigns, will or shall, at the end of six calendar months from the time such notice shall be given as aforesaid, on receiving all and every sum and sums of money whatsoever, that shall be due for the arrears of the said annuity, together with a proportional part thereof from the

Declaration, enabling grantor or sureties to re-purchase, on giving six months' notice;

17. BOND, WITH COLLATERAL SECURITIES, AND TWO SURETIES, RE-PURCHASABLE.

last day of payment preceding such re-purchase, up to and including the day of re-purchasing the same as aforesaid, accept, receive, and take the said sum of £——, as and in full for the re-purchase of the said annuity: Or, in case the said [*grantor and sureties*], or any or one of them, or the heirs, executors, or administrators of the said [*sureties*], or either of them, should at any time hereafter be desirous of re-purchasing the said annuity, and should give seven days' notice in writing of such their or his intention unto the said [*grantee*], his executors, administrators, or assigns, that he the said [*grantee*], his executors, administrators, and assigns, will or shall, at the end of seven days from the time such notice shall be given as aforesaid, on receiving all and every sum and sums of money whatsoever that shall be due for the arrears of the said annuity, together with a proportional part thereof, from the last day of payment preceding such re-purchase, up to and including the day of re-purchasing the same as aforesaid, accept, receive, and take the said sum of £——, as and in full for the re-purchase of the said annuity. And on receiving either of the said sums, as the case may happen, and all arrears of the said annuity, and such proportional part thereof as aforesaid, if such re-purchase should be made by the said [*grantor*], will or shall deliver the above-written bond or obligation to the said [*grantor*], to be cancelled; *And* then, and in such case, the said annuity shall cease, determine, and be no longer paid or payable; *But* if such re-purchase should be made by the said [*sureties*], or either of them, or by the heirs, executors, or administrators of them or either of them, the said annuity shall continue for the benefit of the person or persons who shall re-purchase the same; and the same, and the several securities for the same, shall be assigned, or otherwise assured by the said [*grantee*], his executors, administrators, or assigns, unto the person or persons re-purchasing the same, or otherwise as he, she, or they shall direct or appoint; *subject* to the like right of the said [*obligor*] to re-purchase the same.

or on paying half a year's annuity in lieu of notice.

If re-purchase made by sureties, annuity to continue for their benefit.

Sealed and delivered by the above-named [*obligor*], [*sureties*], and [*obligee*], (*a*), in the presence of

(*a*) *Vide ante*, pp. 178, n. (*b*); 180, n. (*b*).

18. BOND *for securing an* ANNUITY *to* TWO *or more, as* JOINT TENANTS, *for the Grantor's Life; collaterally secured by an Indenture, and two Warrants of Attorney for confessing Judgments in England and Ireland; with Power to repurchase.* (*A short Form.*)

18. BOND TO TWO JOINT TENANTS, COLLATERALLY SECURED, AND RE-PURCHASABLE.

KNOW ALL MEN *by these presents*, That I [*obligor*], of &c., am bound to [*obligees*], of &c., in the sum of [*double the purchase-money*], to be paid to the said [*obligees*], or to their attornies, executors, administrators, or assigns; *For* which payment I bind myself, my heirs, executors, and administrators, and every of them, by these presents, *Sealed* with my seal: DATED &c.

Obligation from one to two or more as joint tenants.

THE CONDITION of the above-written bond or obligation is such, that if the above-bounden [*obligor*] should henceforth, during his life, pay unto the above-named [*obligees*], their executors, administrators, or assigns, *One* annuity or clear yearly sum of £——, by equal quarterly payments, on the —— day of ——, &c., in every year, the first payment to be made on the —— day of —— next ensuing the date of the above-written bond or obligation: AND in the event of the death of the said [*obligor*] on any other day than one of the said days of payment, if the executors or administrators of the said [*obligor*] should pay to the said [*obligees*], their executors, administrators, or assigns, a proportional part of the said annuity for the interval from the last preceding day of payment up to, and inclusive of, the day of such decease; *All* the said payments to be made at or in the common dining-hall of Lincoln's Inn, in the county of Middlesex, between the hours of ten and twelve of the clock in the forenoon, without any deduction or abatement; (*Being* the same annuity as is secured by two warrants of attorney, bearing even date with the above-written bond or obligation, for confessing judgments against the said [*obligor*] in England and Ireland: *and also* by an indenture of the like date, made between the said [*obligor*], of the first part; [*obligees*], of the second part; and [*trustees of term*], of &c., of the

Condition for paying annuity,

and proportional part.

Reference to warrants of attorney for confessing judgments in England and Ireland; and to grant and demise.

18. BOND TO TWO JOINT TENANTS, COLLATERALLY SECURED, AND RE-PURCHASABLE.

third part:) Or if the said [*obligor*] should redeem or repurchase the said annuity upon such terms, and in such manner, as in the said indenture is expressed, *Then*, and in either of the said cases, the above-written bond or obligation shall be void.

Re-purchasable

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19. BOND FOR TWO LIVES, COLLATERALLY SECURED, AND RE-PURCHASABLE ON REPLACING STOCK.

19. BOND *for securing an* ANNUITY *during the Life of the* SURVIVOR *of two Persons; collaterally secured by Bond, Warrant of Attorney, and Indenture; and re-purchasable on replacing Stock, sold by the Obligee for purchasing the Annuity.*

Obligation.

KNOW ALL MEN (*obligation, ut ante*, p. 173).

Recital of contract of purchase.

WHEREAS the above-named [*obligee*] hath contracted and agreed with the above-bounden [*obligor*], for the purchase of an annuity of £——, to be paid to the said [*obligee*], his executors, administrators, and assigns, during the lives of the said [*obligee*] and [*wife*] his wife, and the life of the survivor, at or for the price or sum of £——. AND WHEREAS

Reference to collateral securities.

upon the purchase of the said annuity, it was agreed that for more effectually securing the payment thereof unto the said [*obligee*], his executors, administrators, and assigns, the same should be secured by a certain indenture, bearing even date with the above-written bond or obligation, and made between the said [*obligor*], of the first part; the said [*obligee*], of the second part; and [*trustee*], of &c., of the third part: AND also by the bond and warrant of attorney of the

Of paying consideration.

said [*obligor*]. AND WHEREAS the said [*obligee*] hath, on the day above written, paid to the said [*obligor*] the said sum of £——, which he the said [*obligor*] doth hereby acknowledge.

Condition, payment of annuity,

NOW THE CONDITION of the above-written bond or obligation is such, that if the said [*obligor*], his heirs, executors, or administrators, should well and truly pay unto the said [*obligee*], his executors, administrators, or assigns, during the lives of the said [*obligee*] and [*wife*], his wife, and the life of the survivor of them, ONE annuity or yearly sum of £—— of lawful British money, clear of all deductions, by equal quarterly payments, on the ——day of ——, &c., in every

19. BOND FOR TWO LIVES, COLLATERALLY SECURED, AND RE-PURCHASABLE ON REPLACING STOCK.

year, the first payment to be made on the —— day of —— next ensuing the day above written: AND ALSO, should well and truly pay unto the executors, administrators, or assigns, of the said [*obligee*], in case the survivor of them the said [*obligee*] and [*wife*] his wife, should depart this life on any day on which any quarterly payment of the said annuity shall become due, the whole of such quarterly payment; *And* if on any day before any quarterly payment of the said annuity shall have become due, then a proportional part of the said annuity, to be computed from the day of the date above written to the day of the death of the survivor of them the said [*grantee*] and [*wife*]: and if on any day between any two quarterly days of payment, then a proportional part from the last quarterly day of payment to the day of such survivor's decease; *Then* the above-written bond or obligation shall be void and of no effect.

and proportional part.

AND IT IS HEREBY DECLARED, That in case the said [*obligor*], his heirs, executors, or administrators, should at any time hereafter be desirous of re-purchasing the said annuity, and of such his or their intention should give unto the said [*obligee*], his executors, administrators, or assigns, seven days' notice in writing; *And* should, at the expiration of the time to be mentioned in such notice, at his or their own costs and charges, transfer into the name of the said [*obligee*], or into the name of his executors, administrators, or assigns, to and for his and their own use and benefit, £—— Consolidated Three Pounds per centum Annuities; *And* should well and truly pay unto the said [*obligee*], his executors, administrators, or assigns, all such sums of money as at the time of re-purchasing the said annuity shall be due for the arrears thereof; together with a proportional part of the same annuity, up to and including the day of re-purchasing the same, as and in full for the re-purchase of the said annuity, *Then* he the said [*obligee*], his executors, administrators, or assigns, will or shall deliver the above-written bond or obligation to the said [*obligor*], his heirs, executors, or administrators, cancelled or to be cancelled. *And* the said annuity shall cease and determine.

Proviso for re-purchase.

SEALED AND DELIVERED by the above-named [*obligor*], and [*obligee*] (*c*)]; in the presence of

(*c*) *Vide ante*, p. 178, n. (*b*).

20. COVENANT FOR PAYING ANNUITY FOR SURRENDERING BUSINESS.

20. COVENANT *for payment of an* ANNUITY *collaterally secured by Bond, in consideration of resigning a* BUSINESS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN [*grantee*], of &c., surgeon and apothecary, of the one part; and [*grantor*], of &c., surgeon and apothecary, of the other part.

Recital of carrying on business;

WHEREAS the said [*grantee*] hath, for many years past, carried on the business of a surgeon and apothecary, and hath established a considerable practice and connection in the said business at —— aforesaid.

of agreement to resign in consideration of annuity;

AND WHEREAS the said [*grantee*] hath agreed with the said [*grantor*] to resign to or in favour of the said [*grantor*] the said practice and connection in the said business, in consideration of an annuity of £——, to be paid by the said [*grantor*], his heirs, executors, or administrators, to the said [*grantee*] and his assigns, during his life, at the times hereinafter mentioned.

of collateral bond for securing annuity,

AND WHEREAS in pursuance of the said agreement, the said [*grantor*] hath, by his bond or obligation (*a*), bearing even date herewith, become bound unto the said [*grantee*], in the penal sum of £——, with a condition thereunder written, making the same void if the said [*grantor*], his heirs, executors, or administrators, should pay unto the said [*grantee*], or his assigns, during his life, *One* annuity or yearly sum of £——, without any deduction, by equal half-yearly payments, on &c., in each year, the first half-yearly payment thereof to be made on the —— day of —— next ensuing the date above written: *And also* should, within twenty days next after the decease of the said [*grantee*], pay unto the said executors, administrators, or assigns of the said [*grantee*] a proportional part of the annuity for the time which at his decease should have elapsed of the half-yearly payment thereof then growing due.

and proportional part.

Testatum.

NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the said annuity, the said [*grantee*] *doth* by these presents, so far as in him lieth, grant, resign, and yield up unto the said [*grantor*], the

Resignation of business.

(*a*) *Vide* the form of the bond, *ante*, p. 183.

20. COVENANT FOR PAYING ANNUITY FOR SURRENDERING BUSINESS.

liberty or privilege of carrying on and conducting the trade or business of a surgeon or apothecary, heretofore practised and carried on by him the said [*grantee*], in or within ——, and the adjacent parts thereof, by and in the room and stead, and as the successor, of the said [*grantee*], and all benefit, profits, emoluments, and advantage, to arise or accrue, or be raised or derived, by or from the same. AND THE SAID [*grantee*] doth hereby, for himself, his heirs, executors, and administrators, covenant with the said [*grantor*], his executors and administrators, That he the said [*grantee*] will, as soon as conveniently may be, introduce and recommend the said [*grantor*] to all the patients of or persons employing the said [*grantee*], in his business or profession as aforesaid: AND will use his utmost and best endeavours to procure the said [*grantor*] to be employed by such persons, in like manner as he the said [*grantee*] hath heretofore been employed by them in his said trade or business of a surgeon or apothecary as aforesaid: AND that he the said [*grantee*] will not use, exercise, or carry on, practise, or profess the said trade or business of a surgeon or apothecary, or either of them, within ——, or within ten miles from the same ——, without the leave or licence of the said [*grantor*] first had and obtained in writing: AND will not recommend, or procure to be recommended, any other person or persons whomsoever than the said [*grantor*], to any person or persons at this time employing him the said [*grantee*], in his said trade or business of a surgeon and apothecary, or either of them. AND THE SAID [*grantor*], for himself, his heirs, executors and administrators, doth hereby covenant with the said [*grantee*] and his assigns, that he the said [*grantor*], his heirs, executors, or administrators, or some or one of them, will or shall, during the life of the said [*grantee*], pay unto the said [*grantee*] or his assigns, the said annuity or yearly sum of £——, on the days or times in the said bond or obligation expressed and appointed for payment thereof; together with such proportional part thereof as aforesaid, unto the executors, administrators, or assigns, of the said [*grantee*], according to the true intent and meaning of the said bond or obligation, and of these presents. IN WITNESS &c.

Covenant by grantee to introduce and recommend grantor to his employers.

Not to practise within ten miles.

Not to recommend any other person.

Covenant by grantor to pay annuity.

21. COVENANT FOR PAYING ANNUITY, AND ADDITIONAL PREMIUM; WITH DEFEAZANCE ON JUDGMENT.

21. COVENANT *to pay an* ANNUITY *for the* GRANTOR'S LIFE, *collaterally secured by Bond; and* COVENANT *to appear at* INSURANCE *Office, &c.; with* DEFEAZANCE *on* JUDGMENT.

Parties.

THIS INDENTURE, made &c., BETWEEN [*grantor*], of &c., of the one part; and [*grantee*], of &c., of the other part.

Recital of contract,

WHEREAS the said [*grantee*] hath contracted with the said [*grantor*], for the purchase of an annuity or yearly sum of £——, to be paid to the said [*grantee*], his executors, administrators, and assigns, during the life of the said [*grantor*], and to be secured in manner hereinafter mentioned, at or for the price or sum of £——: AND WHEREAS (*recite bond, ut ante, p.* 194): AND WHEREAS, for better securing the payment of the said annuity, the said [*grantor*] hath executed a warrant of attorney, bearing even date with the said bond and these presents, thereby authorizing and empowering certain attornies, therein named, to confess a judgment against him in her Majesty's Court of ——, at Westminster, in an action of debt upon the said bond, for the sum of £——, and costs of suit; *And* it is intended and agreed, that judgment shall be immediately entered thereupon accordingly:

of warrant of attorney.

Testatum.

NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— of lawful British money, before the execution of these presents paid by the said [*grantee*] to the said [*grantor*], The receipt whereof the said [*grantor*] doth hereby acknowledge; and from the same, doth acquit, release, and for ever discharge the said [*grantee*], his heirs, executors, administrators, and assigns, *He* the said [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*grantee*], his executors, administrators, or assigns, that he the said [*grantor*] will well and truly pay unto the said [*grantee*], his executors, administrators, or assigns, during the life of him the said [*grantor*], the said annuity or yearly sum of £——, free from taxes, and clear of all other deductions whatsoever, on the days and times, and in the manner in the said bond or obligation mentioned

Covenant for payment of annuity;

and appointed for payment thereof: AND that the heirs, executors, or administrators, of the said [*grantor*], shall on demand, within twenty days after the death of the said [*grantor*], well and truly pay unto the said [*grantee*], his executors, administrators, or assigns, such proportional part of the said annuity for the time which, at the decease of the said [*grantor*], shall have elapsed of the quarterly payment of the same annuity growing due at the time of his decease, as in the said bond or obligation is mentioned: AND ALSO that he the said [*grantor*] will, upon having reasonable notice, at any time or times hereafter, at the request and desire of the said [*grantee*], his executors, administrators, or assigns, appear in person, as often as there may be occasion for so doing, at any office or place of insurance within the cities of London or Westminster; or send the said [*grantee*], his executors, administrators, or assigns, notice of his place of abode, and such vouchers as the office may require, respecting his state of health, from time to time; in order that the said [*grantee*], his executors, administrators, or assigns, (if he or they should think fit) may insure the life of the said [*grantor*] for any sum or sums of money not exceeding the sum of £——; AND also that he the said [*grantor*] will not leave this kingdom, or go and travel upon the seas, or reside in foreign parts, or take upon himself any military or naval employment, without giving, every time, one calendar month's previous notice in writing to the said [*grantee*], his executors, administrators, or assigns, to enable him or them to make known the same at the office or offices where the life of the said [*grantor*] shall or may be insured, to the end that the additional premium or premiums to be thereby incurred from time to time, for the purpose of keeping on foot any policy or policies of insurance, effected or to be effected by the said [*grantee*], his executors, administrators, or assigns, on the life of the said [*grantor*] as aforesaid, may be paid unto the office or offices where the life of the said [*grantor*] may for the time being be so insured; AND FURTHER, that he the said [*grantor*], his heirs, executors, or administrators, will or shall well and truly pay unto the said [*grantee*], his heirs, executors, administrators, and assigns, all such additional premium or premiums of insurance as the said [*grantee*], his executors, administrators, or assigns, shall or may pay unto such office or offices, in respect of the matters last aforesaid, within the

21. COVENANT FOR PAYING ANNUITY, AND ADDITIONAL PREMIUM; WITH DEFEASANCE ON JUDGMENT.

to attend at Insurance Office, or send vouchers of his health.

To give notice of going on the seas, &c.

And to pay additional premiums for insurance;

21. COVENANT FOR PAYING ANNUITY, AND ADDITIONAL PREMIUM; WITH DEFEAZANCE ON JUDGMENT.

space or time of seven days after every or any such payment shall be made as aforesaid; AND also (*b*) that he the said [*grantee*] will not do any act, deed, or thing whatsoever, whereby or by means whereof any such policy or policies of insurance as aforesaid shall or may become forfeited, or the money thereby secured shall not become payable. AND THIS INDENTURE FURTHER WITNESSETH, *and it is hereby declared and agreed* that the said judgment upon the aforesaid bond shall be considered as a security only, for better and more effectually securing the payment of the said annuity or yearly sum of £—— to the said [*grantee*], his executors, administrators, and assigns, during the life of him the said [*grantor*], at the several days and times, and in the manner limited and appointed for the payment thereof, in and by the condition to the said bond, and of such proportional part thereof as aforesaid; AND that no execution or executions shall be issued or taken out upon the said judgment, unless and until some payment or portion of the said annuity or some part thereof, shall be in arrear for twenty-one days next after some or one of the days or times so limited and appointed for the payment thereof. PROVIDED ALWAYS, and the said [*grantor*] for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that when and so often as the said annuity or any part thereof, or such proportional part thereof as aforesaid, shall be behind and unpaid by the space of twenty-one days next over or after any of the days or times mentioned or appointed for payment thereof in the condition to the said bond or obligation; *Then*, and so often, and in every such case, it shall and may be lawful to and for the said [*grantee*], his executors, administrators, and assigns, to sue out such execution or executions, upon or by virtue of the said judgment, as he or they shall think fit or be advised, for the recovery of the arrears of the said annuity, and every part thereof; and all costs and charges which the said [*grantee*], his executors, administrators, or assigns, or any of them, shall bear, pay, sustain, or be put

and not to do any act whereby policies shall be forfeited.

Defeazance on judgment.

(*b*) This is inserted to guard against a forfeiture of the policy, by the grantor committing treason or suicide. [But if the insurance is effected in the name of the *grantee*, it is not liable to be affected by such event. *Vide infra*, Vol. 5, p. 311.]

unto, for or by reason or means of the non-payment thereof: And that it shall not be necessary for the said [*grantee*], his executors, administrators, or assigns, to revive or cause the said judgment to be revived, or to do any act, matter, or thing, to keep the same on foot, notwithstanding the said judgment shall have been entered on record for the space of one year or upwards; and notwithstanding any rule or practice of the court in which the said judgment shall be entered on record, to the contrary; And that the said [*grantor*], his heirs, executors, administrators, or assigns, will not nor shall have, take, or receive, or attempt, by any ways or means, to have, take, or receive any advantage for want of reviving or keeping the said judgment on foot. Provided always, that from and after the decease of the said [*grantor*], and full payment of all arrears of the said annuity, and such proportional part thereof as aforesaid, and all such costs, charges, damages, and expenses as aforesaid, and all other costs, charges, damages, and expenses in any wise relating to the said judgment and premises, he the said [*grantee*], his executors, administrators, or assigns, will or shall, upon the request, and at the costs and charges of the heirs, executors, administrators, or assigns, of him the said [*grantor*], acknowledge satisfaction of the said judgment upon the record thereof. In witness &c.

21. COVENANT FOR PAYING ANNUITY, AND ADDITIONAL PREMIUM; WITH DEFEAZANCE ON JUDGMENT.

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22. COVENANT *by a* Tenant for Life *to surrender a* Copyhold *Estate to the Use of the Grantee of an* Annuity *for ninety-nine Years, if the Grantor should so long live; collaterally secured by Bond and Warrant of Attorney to confess Judgment thereon;* Defeazance *on the Judgment; and Clause for* Repurchase, *after the Expiration of three Years, on giving Six Months' Notice, and repaying Purchase Money, or on repaying Purchase Money and Half a Year's Annuity, without Notice.*

22. COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; REPURCHASABLE.

THIS INDENTURE, made, &c., Between [*grantor*], of &c., of the one part; and [*grantee*], of &c., of the other part. Whereas at a general court-leet and court-baron of the manor of ——, in the county of ——, held on the —— Parties. Recital of grantor's admission;

22. COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; REPURCHASABLE.

day of ——, *it was presented* by the homage, that [*ancestor*], then late one of the customary tenants of the said manor, died seised of *All that* customary messuage or tenement, &c., situate, lying, and being within the said manor, which were theretofore the estate of —— deceased; and that, upon his death, the said [*grantor*], his son, became entitled to the same premises for his life, under and by virtue of a surrender made by the said [*ancestor*], at a court holden for the said manor on the —— day of ——, to the use of a certain indenture bearing date &c., in the same surrender particularly mentioned and set forth: *At* which court the said [*grantor*] prayed of the lord to be admitted tenant to the premises so surrendered by the said [*ancestor*] his father, *To* whom the lord by his steward granted seisin by the rod, *To hold* unto the said [*grantor*], and his assigns, during his life, according to the tenor and true intent and meaning of the said indenture, by the rod, at the will of the lord, according to the custom of the said manor, by the rents, customs and services therefore due and of right accustomed.

of contract for purchase,

AND WHEREAS the said [*grantee*] hath contracted and agreed with the said [*grantor*], for the purchase of an annuity of £——, to be paid to the said [*grantee*], his executors, administrators, and assigns, clear of all deductions, during the term of ninety-nine years, if the said [*grantor*] should so long live, to be secured by the bond or obligation of the said [*grantor*], and a warrant of attorney for entering up judgment thereon; *And* by a surrender of the said copyhold premises, on the condition, and upon the trusts hereinafter mentioned, at the price of £——. AND WHEREAS (*Recite bond and warrant of attorney, ut ante, pp.* 194, 196).

to be secured by bond, judgment, and surrender.

Testatum.

NOW THIS INDENTURE WITNESSETH, That in pursuance of the said agreement, and in consideration of the sum of £——, of lawful British money, by the said [*grantee*] to the said [*grantor*] paid at or before the sealing and delivery of these presents, the receipt whereof he the said [*grantor*] doth hereby acknowledge, and from the same doth acquit, release, and discharge the said [*grantee*], his heirs, executors, administrators, and assigns, he the said [*grantor*] *Doth* hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*] will (*c*), at

Consideration.

Covenant by grantor to surrender copyhold,

(*c*) A previous surrender is generally to be preferred. *Infra*, p. 220, n. (*c*).

the request of the said [*grantee*], his executors, administrators, or assigns, but at the costs and charges of the said [*grantor*], surrender into the hands of the lord or lords, lady or ladies of the said manor of —— for the time being, according to the custom of the said manor, ALL THAT the hereinbefore-mentioned customary messuage or tenement and premises, with the appurtenances, TO THE USE of the said [*grantee*], his executors, administrators, and assigns, for and during and unto the full end and term of ninety-nine years, if the said [*grantor*] should so long live (*d*), to be held

22. COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; REPURCHASABLE.

to the use of grantee for ninety-nine years, if grantor should so long live.

(*d*) The statutes 29 Car. 2, c. 13, s. 12, and 14 Geo. 2, c. 20, s. 9, respecting estates *pour autre vie*, did not extend to copyholds. *Withers* v. *Withers*, Ambl. 152; 7 Bac. Abr. 417 (B): *Zouch* v. *Forse*, 7 East, 186; 1 Watk. Cop. 302; Id. 196. And therefore, if an estate *pour autre vie* in copyholds, was limited to a man and his executors, administrators, and assigns, on the death of the tenant *pour autre vie* the estate would determine, at law at the least. Noy's Maxims, 116, 9th Ed.

The old statutes respecting estates *pour autre vie* did not extend to copyholds.

[J. There can be no general occupancy of copyholds, the freehold being in the lord: and if, therefore, copyhold lands were limited to a person for the life of another, without words of limitation, his estate determined at his own decease, though that event happen in the lifetime of the *cestui que vie*. *Smartle* v. *Penhallow*, 2 L. Raym. 994: *Doe* d. *Lempriere* v. *Martin*, 2 Black. 1150. Upon this principle it was held, that where copyhold lands were limited to A. for the lives of herself and B., and afterwards the reversion was limited to C., and A. died in the lifetime of B., an ejectment brought by C., against the devisee of A., more than twenty years after the decease of A., though shortly after B.'s decease, was barred by the Statute of Limitations, the title of C., the reversioner, having accrued at the former period. *Doe* d. *Foster* v. *Scott*, 4 B. & Cr. 706; 7 Dowl. & Ry. 191. But it was admitted that, *by custom*, the estate might have enured to A.'s heir or devisee, or to the *cestui que vie*. This, indeed, was established by the case of *Doe* d. *Nepean* v. *Goddard*, 1 B. & Cr. 522; 2 Dowl. & Ry. 773, where a custom was held to be good, that where a copyhold was granted to a person for the lives of other persons, and the life of the longest liver of such other persons successively, and the copyholder died during the life or lives of such other person or persons without having devised the copyhold, such other person or persons should be entitled to hold the same successively as they are named, during their respective lives; but if the grantee devised the copyhold, then the devisee should be entitled to hold the same during the lives of such persons so surviving as aforesaid. J.]

As to general occupancy of copyholds,

unless by custom.

[J. In stating that an estate *pour autre vie* in copyholds, limited to a man, his executors, administrators, and assigns, determined at his death, Mr. Bythewood has assumed, that executors or administrators could not be special occupants of an estate *pour autre vie*, (a point which he has taken great pains to establish in another work; see Byth. Noy's Maxims, 114); for, otherwise, a copyhold, so limited, would clearly

22. COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; REPURCHASABLE.

at the will of the lord, according to the custom of the said manor: UPON CONDITION *nevertheless*, that if the said [*grantor*], or his assigns, should well and truly pay unto the said [*grantee*], his executors, administrators, or assigns, the said annuity or yearly sum of £ ——, in manner and form in the said bond or obligation mentioned and appointed for payment thereof, *Then* the said surrender shall be void. AND *it is hereby declared and agreed*, that in case default should be made in payment of the said annuity according to the condition of the said bond or obligation, then he the said [*grantee*], his executors, administrators, and assigns, shall be possessed of and interested in the said messuage or tenement and premises, UPON TRUST, by and out of the rents, issues, and profits of the same or any part or parts thereof,

if grantor pay annuity, surrender to be void;

but in default of payment,

upon trust, out of rents, to raise annuity and costs;

Estate *pour autre vie* in copyholds.

have devolved upon them in that character; and, according to *Ripley* v. *Waterworth*, 7 Ves. 425, would be distributable as the personal estate of the deceased tenant. But the point was not likely to arise as to copyholds held *pour autre vie*, as stewards of manors almost invariably objected to their being limited to the executors or administrators, and required the limitation to be to the *heirs*, which excludes all question, as the heir then takes as special occupant.[J.] [Now, however, there is no excuse left for such an objection on the part of the steward, as by the statute 7 Will. 4 & 1 Vict. c. 16, s. 6, estates *pour autre vie* in copyholds devolve upon the personal representatives, unless they are limited to the heirs. *Ante*, p. 10.]

Advantages of creating a term for years.

By creating a term for years, if the tenant for life should so long live, the grantee acquires the benefit of the estate for life, although nominally a reversion continues in the grantor; because it is *possible* the estate for life may last longer than the number of years mentioned; and on account of the legal principle, that an estate for life, according to the gradation of estates, is to be *presumed* of longer duration than an estate even for a thousand, or any other number of years. *Jermin* v. *Orchard*, Show. P. C. 203, and *vide ante*, p. 119. By this form of limitation, the copyhold estate will be *possessed* by the same persons to whom the annuity will be payable, in case of the grantor's death before the annuity is repurchased or determined, thereby preventing the inconvenience of having the estate in the heir of the grantee, whose infancy might cause difficulties in procuring a resurrender on repurchasing the annuity, if the surrender should have become absolute by non-payment, *vide post*, p. 223, n. (*b*); and as the heir of the grantee would take the estate *pour autre vie* by descent, it seems a fine would be payable on his admission, where a fine is payable on the death of a tenant dying *seised*. Noy's Maxims, 114, 9th Ed.; *sed vide* 1 Watk. Cop. 313; Gilb. Ten. 327; Scriv. Cop. 402, 2nd Ed. [But so far as the inconvenience arising from the devolution of the estate on an infant heir is concerned, the recent statute has obviated the necessity (if it ever existed) of resorting to a demise for years of the estate *pour autre vie*.]

22. COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; REPURCHASABLE.

or by mortgage or sale thereof, or of any part or parts thereof, or by all or any of the same ways and means, or by such other ways and means whatsoever, as to him the said [*grantee*], his executors, administrators, or assigns, shall seem meet, to raise and levy such sum and sums of money as shall be sufficient to pay and satisfy the said annuity, or so much thereof as shall from time to time happen to be in arrear and unpaid at the days and times in and by the condition to the said bond or obligation mentioned and appointed for the payment thereof; *And also* all such sums of money, losses, costs, charges, damages, and expenses, as the said [*grantee*], his executors, administrators, or assigns, or any of them, shall pay, sustain, expend, or be put unto, for or by reason or means of the non-payment of the said annuity, or any part thereof, or the performance of the trusts hereof or otherwise relating thereto, *And* to retain, pay, and apply the monies so to be raised, in payment and satisfaction thereof accordingly (*e*), *And subject* to the trusts aforesaid, the said messuage or tenement and premises shall be *In trust* for the said [*grantor*] and his assigns, during the said term of ninety-nine years, determinable as aforesaid. PROVIDED ALWAYS, that all and every the contracts, agreements, sales, mortgages, dispositions, conveyances, surrenders, assurances, acts, deeds, matters, and things, which shall be entered into, made, done, or executed by the said [*grantee*], his executors, administrators, or assigns, of or concerning the said messuage or tenement and premises, or any part thereof, shall, to all intents, constructions, and purposes whatsoever, be as valid and effectual in the law, although the said [*grantor*], or his assigns, should not execute the same, or join therein, or assent thereto, as the same would have been, if the said [*grantor*], or his assigns, had duly executed the same, and joined therein, or assented thereto, *And* that the person or persons to whom the said [*grantee*], his executors, administrators, or assigns, shall convey or otherwise dispose of the said messuage or tenement and premises, or any of them, or any part or parts thereof, shall, notwithstanding the said [*grantee*] should not execute the same, or join therein, or assent thereto, be entitled to have, hold, and enjoy the

and subject thereto, in trust for grantor and his assigns.

Sales and mortgages by grantee to be valid without grantor's concurrence.

(*e*) If it be the agreement, and trust for investing the residue of the proceeds, and the rents and profits, *ut infra*, p. 211.

Trusts to invest residue.

22. COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; REPURCHASABLE.

same messuage or tenement and premises, against the said [*grantor*] and his assigns, and all persons claiming, or to claim, by, from, through, under, or in trust for him or them. PROVIDED ALWAYS, that the person or persons who shall pay to the said [*grantee*], his executors, administrators, or assigns, all or any part of the rents and annual profits of the said messuage or tenement and premises, or advance any money upon any sale or sales, or upon the security of any mortgage or mortgages of the same premises, or any part thereof, or otherwise, shall not be obliged or required to see to the application of the said rents, profits, and money respectively, or any of them, nor to inquire whether such receipt of the rents and profits, sale or sales, mortgage or mortgages, is or are necessary for all or any of the purposes hereinbefore mentioned; nor be answerable or accountable for the misapplication or non-application of the same: AND that all receipts which shall be given by the said [*grantee*], his executors, administrators, or assigns, for all or any part of the said rents, profits, and money respectively, shall be good and sufficient acquittances and discharges for the sum and sums of money which by such receipts, and every of them, shall be acknowledged or expressed to be or to have been received. PROVIDED ALSO, that the said [*grantee*], his executors, administrators, and assigns, shall not be charged or chargeable with or for any sum or sums of money, other than such as shall actually and respectively come to his or their hands, by virtue of these presents, nor with or for any loss or damage which may happen in or about the execution of all or any of the trusts aforesaid, without his or their wilful default. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*grantee*], his executors, administrators, and assigns, That he the said [*grantor*], his heirs, executors, or administrators, will or shall pay unto the said [*grantee*], his executors, administrators, or assigns, the said annuity or yearly sum of £——, and also such proportional part thereof as aforesaid, free from taxes, and clear of all other deductions whatsoever, at the days and times, and in manner and form expressed, and appointed for payment thereof, in and by the condition to the said bond or obligation: AND ALSO that he the said [*grantor*] is lawfully and rightfully seised of, or well entitled to, the said messuage or tenement and premises, of a good estate in

Power to give receipts.

Indemnity to grantee.

Covenant by grantor for paying annuity.

That he is seised of the premises for life.

possession for his life, according to the custom of the said manor. And also that he the said [*grantor*] now hath in himself good right, full power, and lawful and absolute authority to surrender the said messuage or tenement and premises, with the appurtenances, to the use of the said [*grantee*], his executors, administrators, and assigns, for and during the said term of ninety-nine years, if the said [*grantor*] should so long live, upon the trusts, and to and for the intents and purposes hereinbefore mentioned, expressed, and declared of and concerning the same, according to the true intent and meaning of these presents: And further, that the said messuage or tenements and premises shall, and lawfully may, from time to time and at all times hereafter, remain, continue, and be to the use of the said [*grantee*], his executors, administrators, and assigns, for and during the said term of ninety-nine years, determinable as aforesaid, upon the trusts and to and for the intents and purposes hereinbefore mentioned, expressed, and declared, of and concerning the same; *And* shall and may be accordingly, peaceably and quietly had, held, and enjoyed, without the lawful let, suit, hindrance, interruption, or denial of him the said [*grantor*], or his assigns, or any other person or persons whomsoever: And free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise by him the said [*grantor*], his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all former and other uses, trusts, titles, charges, and incumbrances whatsoever, had, made, done, committed, or suffered, by the said [*grantor*], or any other person or persons, by, through, or with his act, means, default, procurement, or privity: And moreover, That he the said [*grantor*] will from time to time and at all times hereafter, at the costs and charges of the said [*grantor*], his heirs, executors, administrators, or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all such further and other lawful acts, things, conveyances, surrenders, and assurances in the law whatsoever, for further and better, more perfectly and absolutely, surrendering and assuring the said messuage or tenement and premises, with their appurtenances, to the use of the said [*grantee*], his executors, administrators, and assigns, during the said term of ninety-nine years, if the said [*grantor*] should so long live, on the conditions, upon the trusts, and to and for the in-

22. COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; REPURCHASABLE.

And has power to surrender upon trusts.

And that premises shall continue upon trusts.

Free from incumbrances.

For further assurance.

22. COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; REPURCHASABLE.

tents and purposes hereinbefore mentioned, expressed, and declared of and concerning the same, *As* by the said [*grantee*] (*g*), his executors, administrators, or assigns, or his or their counsel shall be reasonably devised or advised and required.

Recital that judgment was to be entered.

AND WHEREAS upon the treaty for the purchase of the said annuity it was agreed, that the said judgment so to be confessed upon the said bond, for the said sum of [*penal sum*], and costs as aforesaid, should be forthwith entered on record in the said court of ——. NOW THIS INDENTURE FURTHER WITNESSETH, (*Add defeazance on the judgment, ut ante*, p. 198).

Defeazance on judgment.

Clause for repurchase after three years, on six months' notice and repaying purchase money, or on repaying purchase money and half a year's annuity, without notice.

AND IT IS HEREBY FURTHER DECLARED AND AGREED, *And* the said [*grantee*], for himself, his heirs, executors, administrators, and assigns, doth hereby covenant and agree with the said [*grantor*], his executors, administrators, and assigns, that in case the said [*grantor*] (*h*) should at any time after the expiration of the space or time of three years from the date hereof, be desirous of repurchasing the said annuity, and of such intention should give unto the said [*grantee*] (*g*), his executors, administrators, or assigns, notice in writing by the space of six calendar months, that he the said [*grantee*] (*g*), his executors, administrators, or assigns, will or shall, at the expiration of such six calendar months, from the time such notice shall be given, on receiving all such sums of money as shall be then due for the arrears of the said annuity, together with a proportional part thereof, up to and including the day of repurchasing the same as aforesaid, accept, receive, and take the sum of £——, as and in full for the repurchase of the said annuity; *But* in case the said [*grantor*] (*i*), from and after the said space or time of three years, should be desirous of repurchasing the said annuity, and should not give such six calendar months' notice in writing, then that he the said [*grantee*] (*k*), his executors, administrators, or assigns, will

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GRANTEE'S LIFE.

(*g*) If the annuity be granted for the life of the grantee, say, "or his assigns,"

GRANTEE'S OR NOMINEES' LIVES.

(*h*) If for the life of grantee, or for the lives of nominees, add— "his heirs, executors, or administrators,"

GRANTEE'S OR NOMINEES' LIVES.

(*i*) If for the life of grantee, or for the lives of nominees, add— "his heirs, executors, or administrators,"

GRANTEE'S LIFE.

(*k*) If the annuity be granted for the life of the grantee, say, "or his assigns."

or shall, on receiving all sums of money whatsoever that shall be then due for the arrears of the said annuity, together with a proportional part thereof from the last day of payment preceding such repurchase, up to and including the day of repurchasing the same as aforesaid, accept, receive, and take the sum of £——, as and in full for the repurchase of the said annuity: And on receipt of either of the said sums, as the case may happen, and all arrears of the said annuity, and such proportional part thereof as aforesaid, will or shall, at the costs and charges of the said [*grantor*] (*l*), deliver the said bond to the said [*grantor*] (*l*), cancelled, or to be cancelled; and acknowledge, or cause satisfaction to be acknowledged, on the record of the judgment which shall be entered up by virtue of the said warrant of attorney; and re-surrender the said messuage, hereditaments, and premises unto the said [*grantor*] (*m*), or as he or they shall order, direct, or appoint; *And then*, in such case, the said annuity shall cease, determine, and be no longer paid or payable. In witness &c.

22. COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; REPURCHASABLE.

(*l*) See note (*i*) of the preceding page.

(*m*) If for the life of grantee, or for the lives of nominees, add "his heirs and assigns,"

GRANTEE'S OR NOMINEES' LIVES.

23. COVENANT *to surrender a* COPYHOLD *Estate of Inheritance,* UPON CONDITION *to be void on Payment or Repurchase of an* ANNUITY *for the Life, &c. of the Survivor of the Grantee and two Nominees, collaterally secured by Bond and Warrant of Attorney;* TRUSTS *for Sale, and to invest the Purchase-monies;* DEFEAZANCE *on the Judgment; and Proviso for* REPURCHASE *on giving Seven Days' Notice, and repaying the Consideration Money and Half a Year's Annuity in advance.*

23. COVENANT TO SURRENDER COPYHOLDS, WITH TRUSTS FOR SALE, DEFEAZANCE, &c.

THIS INDENTURE, made &c., BETWEEN [*grantor*], of &c., of the one part; and [*grantee*], of &c., of the other part. WHEREAS the said [*grantor*] is seised of or well entitled to the inheritance in possession, according to the cus-

Parties.

Recital of grantor's seisin of a

23. COVENANT TO SURRENDER COPYHOLDS, WITH TRUSTS FOR SALE, DEFEAZANCE, &c.

tom of the manor of ——, in the county of ——, of and in the several pieces or parcels of land and hereditaments hereinafter covenanted to be surrendered. AND WHEREAS the said [*grantee*] hath contracted with the said [*grantor*], for the purchase of an annuity of £——, to be paid to the said [*grantee*], his executors, administrators, and assigns, free from all deductions during the lives of him the said [*grantee*], and [*two nominees*], of &c., and the lives and life of the survivors and survivor of them; *To* be secured by the bond or obligation of the said [*grantor*], and a warrant of attorney for entering up a judgment thereon; and by a surrender of the said copyhold premises, *Upon trust* as hereinafter mentioned; *At* the price of £——; AND WHEREAS the said [*grantor*], by his bond or writing obligatory, under his hand and seal, bearing even date with these presents, hath become bound to the said [*grantee*] in the sum of £——, and the said bond or writing obligatory is conditioned to be void, if the said [*grantor*], his heirs, executors, or administrators, should pay unto the said [*grantee*], his executors, administrators, or assigns, during the lives of him the said [*grantee*], and the said [*nominees*], and the lives and life of the survivors and survivor of them, *One* annuity or yearly sum of £——, free from taxes, and all other deductions, by equal quarterly payments, on the —— day of ——, &c., in every year, the first payment thereof to be made on the —— day of —— next ensuing the date thereof; *And also* should pay unto the executors, administrators, or assigns of the said [*grantee*], in case the survivor of them the said [*grantee*] and [*nominees*] should die on any quarterly day of payment, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment should have become due, then a proportional part of the said annuity from the day of the date of the same bond or writing obligatory, to the day of the death of the survivor of them the said [*grantee*] and [*nominees*]; *But* in case any quarterly payment should have become due at the time of the decease of the survivor of them the said [*grantee*] and [*nominees*], then from the last preceding quarterly day of payment to the day of the death of such survivor. AND WHEREAS the said [*grantor*] hath, by a writing under his hand and seal, bearing even date with these presents, authorized [*solicitor residing in town*], one of the attornies of her Majesty's Court of Queen's

copyhold of inheritance;

of contract;

of annuity bond for the life of the survivor of grantee and two nominees;

of warrant of attorney.

Bench at Westminster, or any other attorney of the same court, by confession or otherwise, to suffer judgment to be entered up against him in the said Court of Queen's Bench, in an action of debt upon the said bond, at the suit of the said [*grantee*], for the sum of [*penalty*], and costs of suit; and judgment is to be forthwith entered up against the said [*grantor*], under the authority of the said warrant of attorney (*a*). NOW THIS INDENTURE WITNESSETH, That in pursuance of the said agreement, and in consideration of the sum of £—— of lawful British money, and by the said [*grantee*] to the said [*grantor*], paid, at or before the sealing and delivery of these presents, [in manner following; that is to say, by a draft or cheque bearing even date with these presents, drawn by the said [*grantee*] on Messrs. —— and Co. bankers, in —— aforesaid, for the said sum of £——, payable to the said [*grantor*], or bearer, on demand, *The* receipt whereof the said [*grantor*] doth hereby acknowledge, and from the same, doth acquit, release, and discharge the said [*grantee*], his heirs, executors, administrators, and assigns, and every of them, by these presents, [out of which said sum of £—— the said [*grantor*], immediately after receiving the same, paid to [*solicitor*], of &c., gentleman, the sum of £—— 6*s.* 8*d.*, for attendances respecting the granting of the said annuity, and for preparing and perfecting the several securities for the same, and for the surrender hereinafter covenanted to be made, and also for preparing and enrolling a memorial thereof], he the said [*grantor*], DOTH hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantee*], his heirs, executors, administrators, and assigns, That he the said [*grantor*], and all and every other person and persons having any estate or interest therein, will and shall, at the request of the said [*grantee*], his heirs, executors, administrators, or assigns, but at the costs and charges of the said [*grantor*], his heirs, executors, or administrators, surrender into the hands of the lord or lords, lady or ladies, of the said manor of —— for the time being, according to the custom of the said manor, ALL THOSE several pieces or parcels of land, situate, lying, and being at ——, within the said manor of ——, and containing by estimation &c., and all other the lands, tenements, and hereditaments whatsoever,

23. COVENANT TO SURRENDER COPYHOLDS, WITH TRUSTS FOR SALE, DEFEAZANCE, &c.

Testatum.

Consideration paid by a banker's cheque.

Payment to solicitor.

Covenant to surrender.

Parcels.

(*a*) If the surrender have been previously made, *vide post*, p. 219.

SURRENDER PREVIOUSLY MADE.

23. COVENANT TO SURRENDER COPYHOLDS, WITH TRUSTS FOR SALE, DEFEAZANCE, &c.

of him the said [*grantor*], holden of the said manor by copy of court roll, with their rights, members, and appurtenances, To THE USE of the said [*grantee*], his heirs and assigns for ever; UPON CONDITION *nevertheless*, that if the said [*grantor*], his heirs, executors, administrators, or assigns, should pay unto the said [*grantee*], his executors, administrators, or assigns, the said annuity or yearly sum of £——, in manner and form in the said bond or writing obligatory mentioned and appointed for payment thereof; or if the said [*grantor*], his heirs, executors, administrators, or assigns, should repurchase the said annuity upon the terms and conditions hereinafter mentioned, then the said surrender shall be void. AND *it is hereby declared and agreed*, that he the said [*grantee*], his heirs and assigns, shall stand seised and possessed of the said several pieces or parcels of land and hereditaments hereinbefore mentioned, UPON TRUSTS, to permit and suffer the said [*grantor*], his heirs and assigns, to receive and take the yearly and other rents, issues, and profits thereof, to and for his and their own use and benefit, until some default shall happen to be made of or in payment of the said annuity, or some part thereof. AND UPON FURTHER TRUST, that in case the said annuity, or any part thereof, should happen to be behind and unpaid for the space of forty days next over or after any of the said days or times whereon the same is limited and appointed to be paid as aforesaid; then and whenever the same shall happen, it shall be lawful for the said [*grantee*], his heirs and assigns, to sell and absolutely dispose of all and every the said hereditaments and premises, either together or in parcels, and either by public auction or private contract, with liberty to buy in the same hereditaments at any sale or sales by auction, if the said [*grantee*], his heirs or assigns, shall think proper so to do, and resell the same at any future auction or auctions or by private contract, without being responsible for any loss which may be occasioned thereby. And also to vacate or vary the terms of any contract for sale, and to insert therein any stipulations restrictive of the title or evidence of title to be required by any purchaser or purchasers (*b*). AND to execute and make all such deeds, conveyances, and assurances, of the said several pieces or parcels of land and heredita-

To the use of grantee, upon condition to be void if grantor pay annuity.

Declaration that grantee shall stand seised upon trust to permit grantor to receive rents until default,

after default for forty days, to sell.

Grantee may buy in at any auction.

(*b*) [As to the utility of this clause, *vide post*, Vol. 5, p. 261.]

ments, to the purchaser or purchasers thereof, as shall be requisite or necessary for the completion of such sale or sales; AND to be possessed of and interested in the proceeds of such sale or sales, and of and in the rents, issues, and profits of the said hereditaments and premises to arise and become payable after the same hereditaments shall become saleable, and until such sale or sales shall be completed, UPON TRUST thereout, in the first place, to retain and reimburse himself and themselves all such costs, charges, and expenses, as he or they shall or may sustain, expend, or be put unto, in or about the making or completing of such sale or sales, or otherwise in the execution of the trusts hereby in him and them reposed; AND after payment thereof, as to the surplus of the money arising from such sale or sales, UPON TRUST, to retain and pay to him the said [*grantee*], his executors, administrators, or assigns, so much of the said annuity as at the time of completing such sale or sales shall happen to be in arrear and unpaid; *and also* all such sum and sums of money, losses, costs, charges, damages, and expenses, as the said [*grantee*], his executors, administrators, or assigns, or any of them, shall pay, sustain, or be put unto, by reason or means of the non-payment of the said annuity, or any part thereof, at or on the days and times, and in the manner hereinbefore mentioned or appointed for the payment thereof, or otherwise however relating thereto. AND UPON FURTHER TRUST, to place out or invest the residue of the money to arise by such sale or sales, and of the rents, profits, and produce of the said hereditaments and premises, until such sale or sales shall be completed, upon government securities, at interest, in the name or names of him the said [*grantee*] his executors, administrators, or assigns. AND *it is hereby declared and agreed*, that the said [*grantee*], his executors, administrators, and assigns, shall be possessed of and be interested in the money so to be placed out and invested, UPON TRUST, by and out of the interest, dividends, and proceeds thereof; and if such yearly dividends, interest, and proceeds should be insufficient, then in addition thereto, by calling in, selling, and disposing of, from time to time, a sufficient part of the principal money so to be invested, or the stocks, funds, or securities for the same, to retain and pay to himself and themselves the said annuity, as and when the same shall become due and payable: AND UPON TRUST ALSO, by and out of the money so to be placed out and invested,

23. COVENANT TO SURRENDER COPYHOLDS, WITH TRUSTS FOR SALE, DEFEAZANCE, &c.

Trusts to retain expenses and arrears of annuity;

And to invest residue; and out of income, or, if insufficient, out of principal, to pay annuity.

23. COVENANT TO SURRENDER COPYHOLDS, WITH TRUSTS FOR SALE, DEFEAZANCE, &c.

and the dividends, interest, and proceeds thereof, to retain to him the said [*grantee*], his executors, administrators, and assigns, all such costs, charges, and expenses, as he or they may sustain, or be put unto, in the execution of the trusts hereby reposed in him and them, respecting the money hereinbefore directed to be invested or placed out at interest; AND subject to the trusts hereinbefore declared, IN TRUST for the said [*grantor*], his executors, administrators, and assigns, to and for his and their own absolute use and benefit. PROVIDED ALWAYS, That after the decease of the survivor of them the said [*grantee and nominees*], and full payment unto the executors, administrators, or assigns, of the said [*grantee*], of the said annuity, and such proportional part thereof, and such costs, charges, damages, and expenses as aforesaid, the said hereditaments and premises, or so much thereof (if any) as shall not be disposed of under or in pursuance of the trusts hereinbefore declared or expressed, shall be IN TRUST for the said [*grantor*], his heirs and assigns for ever, and to be assigned and surrendered as he or they shall direct or appoint. PROVIDED ALSO, that all and every the contracts, agreements, sales, dispositions, conveyances, surrenders, assurances, acts, deeds, matters, and things, which shall be entered into, made, done, or executed by the said [*grantee*], his heirs or assigns, of or concerning the said hereditaments and premises, or any part thereof, shall to all intents and purposes be as valid and effectual in the law, although the said [*grantor*], his heirs or assigns, should not execute the same, or join therein, or assent thereto, as the same would have been if the said [*grantor*] had duly executed the same, and joined therein or assented thereto: PROVIDED ALSO, that the receipt or receipts of the said [*grantee*], his heirs, executors, administrators, or assigns, be a good and sufficient discharge, or good and sufficient discharges, to the person or persons who shall pay the said rents and profits, or purchase-money, of the said hereditaments and premises or any of them, or any part or parts thereof, and to his, her, and their respective heirs, executors, administrators, and assigns, for so much of the rents and profits or purchase-money as shall therein be acknowledged to be received; *And* that such person or persons, his, her, or their heirs, executors, or administrators, shall not afterwards be answerable or accountable for any loss, misapplication, or non-application of such rents and profits or purchase-money so to be received, or any part

And subject thereto, in trust for grantor.

Ultimate trust after determination and payment of annuity and costs for grantor, his heirs and assigns.

Conveyances to be valid though grantor should not join.

Receipt of grantee to be good discharge.

thereof, nor be obliged to inquire into the reason or necessity of receiving such rents and profits, or of making any such sale or sales (*c*). PROVIDED ALSO, that if in the execu-

23. COVENANT TO SURRENDER COPYHOLDS, WITH TRUSTS FOR SALE, DEFEAZANCE, &c.

(*c*) [J. The trusts for sale, it will be observed, are to be exercised by the grantee, his *heirs*, or assigns, but the investment of the monies arising from the sale, &c. is to be made in the name or names of the grantee, his *executors*, *administrators*, or assigns, to whom the annuity is payable. It seems therefore to be proper to exonerate the former from seeing to the application of the money, as above.J.]

Clause exonerating the grantee's heir.

[J. The introduction of trusts for sale and investment into annuity deeds is frequently objected to on account of their prolixity. The present editor has therefore given a concise form of a trust for this purpose—

"AND *it is hereby declared and agreed*, that the said [*grantee*], his heirs and assigns, shall stand seised of the said hereditaments and premises, *Upon the trusts* following; namely, UPON TRUST to permit the said [*grantor*], his heirs, and assigns, to receive the rents and profits thereof until default shall be made in payment of the said annuity, or some part thereof, on any one of the days hereinbefore appointed for payment of the same, *And* UPON FURTHER TRUST, in case the same annuity or any part thereof shall be unpaid for the space of —— days after any day of payment, forthwith to sell the said hereditaments or any part thereof, together or in parcels, and by public auction or private contract, subject to any special stipulations, with liberty to purchase in the same at any auction, and to convey and assure the said hereditaments, when so sold, unto the purchaser or purchasers thereof, *And* to stand possessed of the monies to arise from such sale or sales; and the rents and profits, which shall be received by the said [*grantee*], his heirs or assigns, from the said hereditaments, after the same shall have become saleable, UPON TRUST thereout, in the first place, to retain the costs attending the execution of the trusts hereby created; And after payment thereof, UPON TRUST to retain or pay unto him the said [*grantee*], his executors, administrators, or assigns, all the arrears then due of the said annuity, and all costs and expenses which he or they shall have paid or incurred by reason of the non-payment thereof. AND UPON FURTHER TRUST, to place out the residue (if any) of the monies to arise and be received from such sale or sales, or rents and profits as aforesaid, in the name or names of the said [*grantee*], his executors, ad-

Concise form of trust for sale.

Trust for investment.

23. COVENANT TO SURRENDER COPYHOLDS, WITH TRUSTS FOD SALE, DEFEAZANCE, &c.

tion of the trusts hereinbefore contained, any sum or sums of money shall become payable by the real representative or

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ministrators, or assigns, at interest in government securities of the United Kingdom, with liberty to vary the same as he or they shall think proper. *And it is further declared and agreed* that the said [*grantee*], his executors, administrators, or assigns, shall stand possessed of the stocks, funds, or securities on which the said trust monies shall be so invested: UPON TRUST, out of the annual produce thereof; and, if that shall be insufficient, out of the monies to arise by the sale from time to time of a sufficient part of such stocks, funds, and securities, to retain unto himself and themselves the said annuity, when and as the same shall become payable, and also the costs and expenses attending the last-mentioned trust; And subject to the trusts aforesaid, UPON TRUST, to stand possessed of the said stocks, funds, and securities, for and for the benefit of the said [*grantor*], his executors, administrators, or assigns. PROVIDED ALWAYS, that after the expiration of the said annuity of £——, and the payment of all arrears thereof, and of such proportional part thereof, and all such costs and expenses as aforesaid, the said [*grantee*], his heirs and assigns, shall stand seised of the said hereditaments and premises IN TRUST for the said [*grantor*], his heirs and assigns, and to be surrendered and disposed of as he or they, at his or their own costs and charges, shall direct. PROVIDED ALSO, that every receipt which shall be given by the said [*grantee*], his heirs or assigns, for any purchase-money or rent which shall be received by him or them, by virtue of the trusts aforesaid, shall effectually discharge the person or persons paying the same from all responsibility in respect of the application thereof. *And further*, that no purchaser or purchasers of the said hereditaments and premises shall be obliged to inquire into the necessity or propriety of any sale or sales made by the said [*grantee*], his heirs or assigns, nor be affected by express notice that such sale or sales is or are unnecessary and improper; and any person or persons paying any rents and profits of the said hereditaments to the said [*grantee*], his heirs or assigns, shall not be obliged to inquire whether the receipt thereof is in conformity to or authorized by the trusts hereinbefore declared, nor be af-

representatives of the said [*grantee*], to the personal representative or representatives of the said [*grantee*], for the purpose of being invested or otherwise under or by virtue of the same trusts, or any of them, then and in such case the said real representative or representatives of the said [*grantee*], paying over the said monies to the personal representative or representatives of him the said [*grantee*], and taking his or their receipt for the same, shall be discharged from all responsibility in respect of the application thereof. PROVIDED ALSO, that the said [*grantee*], his heirs, executors, administrators, and assigns, shall not be charged or chargeable with or for any sum or sums of money, other than such as shall actually and respectively come to his or their hands, by virtue of these presents; *Nor* with or for any loss or damage which may happen in or about the execution of all or any of the trusts aforesaid, without his or their wilful default. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, will or shall pay unto the said [*grantee*], his executors, administrators, or assigns, during the lives of the said [*grantee*] and the said [*nominees*], and the lives and life of the survivors and survivor of them, the said annuity or yearly sum of £——, and also such proportional part thereof as aforesaid, free from taxes, and clear of all other deductions whatsoever, at the days and times, and in manner and form expressed and appointed for payment thereof, in and by the said bond or writing obligatory. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby further covenant and agree with the said [*grantee*], his heirs and assigns, That he, the said [*grantor*], hath in himself good right, full power, and lawful and absolute authority, to surrender all and singular the several pieces or parcels of land and hereditaments hereinbefore covenanted to be surrendered as aforesaid, with the appurtenances, to the use of the said [*grantee*], his heirs and assigns, for ever, upon the trusts, and to and for the intents and

23. COVENANT TO SURRENDER COPYHOLDS, WITH TRUSTS FOR SALE, DEFEAZANCE, &c.

Indemnity to grantee.

Covenant by grantor to pay annuity.

Covenant by grantor that he is seised,

and hath good right to surrender, and that on default premises shall remain upon trusts declared;

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fected by express notice that such receipt is unauthorized by and contrary to the same trusts. (*Add clause exonerating the heir, as in the text*).J.]

23. COVENANT TO SURRENDER COPYHOLDS, WITH TRUSTS FOR SALE, DEFEAZANCE, &c.

purposes hereinbefore mentioned, expressed, and declared of and concerning the same, and according to the true intent and meaning of these presents: AND FURTHER, that the said hereditaments and premises shall, and lawfully may, from time to time and at all times hereafter, from and after default shall be made in payment of the said annuity, remain and be, to the use of the said [*grantee*], his heirs and assigns, upon the trusts, and to and for the intents and purposes hereinbefore mentioned, expressed, and declared of and concerning the same; AND shall and may be accordingly, peaceably, and quietly had, held, and enjoyed, without the lawful let, suit, hindrance, interruption, or denial, of him the said [*grantor*], his heirs and assigns, or any other person or persons whomsoever: AND free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise, by him the said [*grantor*], his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all charges and incumbrances whatsoever, had, made, done, or committed, or willingly suffered by the said [*grantor*], or any other person and persons whomsoever: AND MOREOVER, that he the said [*grantor*] and his heirs, and all and every other person and persons whosoever, having or lawfully claiming, or who shall or may hereafter have or lawfully claim, any estate, right, title, trust, or interest of, in, to, or out of the said hereditaments and premises, or any of them, or any part thereof, will and shall from time to time, and at all times hereafter, upon every reasonable request of the said [*grantee*], his heirs, executors, administrators, or assigns, but at the costs and charges of the said [*grantor*], his heirs, executors, or administrators, make, do, and execute, or cause and procure to be made, done, and executed, all such further and other acts, deeds, conveyances, surrenders, and assurances in the law whatsoever, for further, better, more perfectly and absolutely surrendering and assuring the said hereditaments and premises, with their appurtenances, to the use of the said [*grantee*], his heirs and assigns for ever, upon the trusts, and to and for the intents and purposes hereinbefore mentioned, expressed, and declared, of and concerning the same; As by the said [*grantee*], his heirs, executors, administrators, or assigns, or his or their counsel, shall be advised, devised, and required. AND *it is hereby further declared and agreed*, that the said judgment upon the aforesaid bond shall be considered as a

free from incumbrances;

and for further assurance.

Defeazance on judgment.

23. COVENANT TO SURRENDER COPYHOLDS, WITH TRUSTS FOR SALE, DEFEAZANCE, &c.

security only for the better and more effectually securing the payment of the said annuity to the said [*grantee*], his executors, administrators, and assigns, during the lives of the said [*grantee*], and [*nominees*], and the lives and life of the survivors and survivor of them, at the several days and times, and in the manner limited and appointed for the payment thereof, in and by the said condition to the said bond, and of such proportional part thereof as aforesaid: AND that no execution or executions shall be issued or taken out upon the said judgment, unless and until the whole or a part of some quarterly payment of the said annuity shall be in arrear for twenty-one days next after some or one of the days, or after the times in and by the condition to the said bond or obligation limited and appointed for the payment thereof as aforesaid. PROVIDED ALWAYS, and the said [*grantor*], for himself, his heirs, executors, and administrators, *Doth* hereby covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that when and so often as the said annuity, or any part thereof, or such proportional part thereof as aforesaid, shall be behind and unpaid by the space of twenty-one days next over or after any of the days or times mentioned or appointed for payment thereof in the condition to the said bond; then and so often, and in every such case, it shall and may be lawful to and for the said [*grantee*], his executors, administrators, and assigns, to sue out such execution or executions upon or by virtue of the said judgment, as he or they shall think fit or be advised for the recovery of the arrears of the said annuity, and every part thereof; and all costs and charges which the said [*grantee*], his executors, administrators, or assigns, or any of them, shall bear, pay, sustain, or be put unto, for or by reason or means of the non-payment thereof; AND that it shall not be necessary for the said [*grantee*], his executors, administrators, or assigns, to revive or cause the said judgment to be revived, or do any act, matter, or thing, to keep the same on foot, notwithstanding the said judgment shall have been entered on record for the space of one year or upwards, and notwithstanding any rule or practice to the contrary: AND that the said [*grantor*], his heirs, executors, or administrators, will not nor shall have, take, receive, or attempt, by any ways or means, to have or receive any advantage in consequence of not reviving or keeping the said judgment on foot. PROVIDED ALSO, that from and after the

23. COVENANT TO SURRENDER COPYHOLDS, WITH TRUSTS FOR SALE, DEFEAZANCE, &c.

decease of the survivor of them the said [*grantee*] and *nominees*]: and full payment of all arrears of the said annuity, and such proportional part thereof as aforesaid, and all such costs, charges, damages, and expenses as aforesaid, and all other costs, charges, damages, and expenses in anywise relating to the said judgment and premises; he the said [*grantee*], his executors, administrators, or assigns, will or shall, at the request, and at the costs and charges of the heirs, executors, or administrators of the said [*grantor*], acknowledge satisfaction of the said judgment upon the record thereof. AND (*d*) *it is hereby further declared and agreed*, AND the said [*grantee*], for himself, his heirs, executors, administrators, and assigns, doth hereby covenant and agree with the said [*grantor*], his heirs, executors, and administrators, and every of them, that in case the said [*grantor*], his heirs, executors, administrators, or assigns, should at any time hereafter be desirous of re-purchasing the said annuity, and of such intention should give unto the said [*grantee*], his executors, administrators, or assigns, seven days' notice in writing, that he the said [*grantee*], his executors, administrators, or assigns, will or shall, at the expiration of seven days from the time such notice shall be given as last aforesaid, on receiving all sums of money whatsoever which shall be then due on the arrears of the said annuity, together with a proportional part thereof from the last day of payment thereof preceding such repurchase, up to and including the day of repurchasing the same as aforesaid, accept, receive, and take the sum of £——, as in full for the repurchase of the said annuity; AND on receipt of the said sum of £——, and all arrears of the said annuity, and such proportional part thereof as aforesaid, will or shall, at the costs and charges in the law of him the said [*grantor*], his heirs, executors, administrators, or assigns, deliver the said bond to the said [*grantor*], his heirs, executors, administrators, or assigns, to be cancelled; *And* acknowledge, or cause to be acknowledged, satisfaction on the record of the judgment which shall be entered up by virtue of the said warrant of attorney; AND then and in such case the said annuity, and the trusts herein contained for securing the payment thereof, shall cease, determine, and be void: And then and in such

Proviso for repurchase on paying half a year's annuity.

On repurchase grantee to acknowledge satisfaction on court rolls, or

REPURCHASABLE BY INSTALMENTS.

(*d*) If the annuity be repurchasable by one payment, or by instalments, *vide ante*, p. 176.

case the said [*grantee*], his heirs or assigns, will or shall at the request, costs, and charges of the said [*grantor*], his heirs or assigns, acknowledge or cause to be acknowledged upon the court rolls of the said manor of ——, to have received full satisfaction according to the form and effect of the said surrender; or otherwise surrender the several pieces or parcels of land and hereditaments hereinbefore covenanted to be surrendered, or so much thereof as shall not then have been sold and disposed of under the trusts hereinbefore declared, unto the said [*grantor*], his heirs or assigns; or as he or they shall direct or appoint; *And then* also, and in that case, if the same hereditaments, or any part thereof, should have been sold and disposed of, and the produce thereof invested upon government securities at interest, will or shall transfer such government securities as may then remain unapplied and undisposed of for the purposes aforesaid, unto the said [*grantor*], his executors, administrators, or assigns. IN WITNESS &c.

23. COVENANT TO SURRENDER COPYHOLDS, WITH TRUSTS FOR SALE, DEFEAZANCE, &c.

resurrender premises, or such part as shall not be sold; and if any part be sold, and produce invested, to transfer securities to grantor, or his executors.

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24. COVENANT *to pay an* ANNUITY, *for the* GRANTEE'S LIFE, *collaterally secured by a Surrender of* COPYHOLD *Premises, and a Bond and Warrant of Attorney; where the consideration Money is paid by a Bill of Exchange.*

24. COVENANT TO PAY ANNUITY, SECURED BY PREVIOUS SURRENDER OF COPYHOLDS, BOND, &c.

THIS INDENTURE, made &c., BETWEEN [*grantor*], of &c., of the one part, and [*grantee*], of &c., of the other part. WHEREAS the said [*grantee*] hath contracted with the said [*grantor*] for the purchase of an annuity or yearly sum of £——, to be paid to the said [*grantee*], his executors, administrators, and assigns, during the life of the said [*grantee*], at the price of £——: AND WHEREAS (*a*) at a

Parties.

Recital of contract for annuity.

Recital of pre-

(*a*) If the surrender were made out of court to two customary tenants of the manor, say—

SURRENDER OUT OF COURT.

AND WHEREAS the said [*grantor*] hath on the day of the date of these presents, surrendered by the rod into the hands of the lord of the manor of —— in the county of

24. COVENANT TO PAY ANNUITY, SECURED BY PREVIOUS SURRENDER OF COPYHOLDS, BOND, &c.

special court (*or* court baron) held [in and] for the manor of —— in the county of ——, on the day of the date of these presents (*or* on the —— day of (*b*) —— last past), the said

——, by the hands and acceptance of [*copyholders*], two of the customary tenants of the said manor, ALL THOSE &c." *ut supra.*

vious surrender of copyhold.

Practice as to copyhold securities for annuities.

(*b*) When copyhold premises are intended as a security for an annuity, sometimes a previous surrender is made on condition, as in the above form, with trusts for sale, &c., on default in payment; and sometimes a covenant is entered into, to make a subsequent surrender on the same condition and trusts, *ut ante*, p. 210; but it is generally prudent to have the surrender actually made before the consideration money is paid: and when, from circumstances, that cannot be previously accomplished, it should be done as soon after as possible; but more especially where the annuity is granted for the life of the grantee or of a nominee; for in case of the grantor's death, before making the surrender, much trouble and inconvenience may be experienced, in procuring it to be made, in consequence of the infancy or obstinacy of his customary heir. [See an additional reason suggested for not relying upon a covenant to surrender merely as a security, *infra*, Vol. 5, p. 234.]

Condition and trusts should be inserted on court rolls.

The usual proviso or condition, making the surrender void on the due payment of the annuity, and also the trusts for sale &c. should always immediately follow the surrender, and be carefully inserted in the Court rolls. The condition and trusts are, however, often contained in the deed of covenant, without being mentioned on the Court rolls: but this mode should never be adopted when it is possible to be avoided; for, the surrender being absolute on the rolls, should the defeazance be lost, the proof of the condition and trusts may be difficult, and frequently impossible, because the form of the memorial required by the present annuity act does not disclose these circumstances, and copyholds are not within the acts for registering deeds, &c. in Middlesex and Yorkshire. Besides, the title to copyhold lands should always appear on the Court rolls of the manor, and not be dependent on any private deeds or agreements: and even if a defeazance be made by a separate deed, it should always be entered on the rolls: because the lord, by consenting to a condition or trust on the Court roll, in case of escheat, &c., is bound by the condition or trust, as he cannot claim against his own act. *Burgess* v. *Wheate*, 1 W. Blackst. R. 167; 1 Eden, 232; *Stockdale* v. *The South Sea Company*, 2 Atk. 141; *Peachy* v. *Duke of Somerset*, Prec. Ch. 573. [The statute 4 & 5 Will. 4, c. 23, (stated *infra*, Vol. 5, p. 436) has rendered it unnecessary to guard against the title of the lord by escheat. *Vide infra*, Vol. 5, p. 234.]

Surrenderor is tenant until surrenderee's admittance.

Whether the surrender be conditional or absolute, the surrenderor remains tenant to the lord until the admission of the surrenderee; and prior to 55 Geo. 3, c. 192, he could not, before the admission of the surrenderee, devise the copyholds without a previous surrender to the use of his will. *Kenebel* v. *Scrafton*, 8 Ves. 30; *Doe* v. *Wroot*, 5 East, 130; Coote, Mortg. 131, 2nd Ed. And if the surrenderor die before the

[*grantor*], surrendered by the rod into the hands of the lord, according to the custom of the said manor, ALL those

24. COVENANT TO PAY ANNUITY, SECURED BY PREVIOUS SURRENDER OF COPYHOLDS, BOND, &c.

admittance of the surrenderee, the surrenderor will die tenant to the lord; and, consequently, a heriot will be due on his death. 1 Watk. Cop. 147; *Doe* v. *Tofield*, 11 East, 246. For the same reason, no heriot will be due on the death of the surrenderee before his admission. So, if a copyholder *covenant* to surrender, and before a surrender be made the covenantee assign his interest, one fine only will be due on the assignee's admission; because the covenantee never was tenant to the lord, and the lord will be obliged to admit the assignee accordingly. *Rex* v. *The lord of the manor of Hendon*, 2 T. R. 484; 1 Watk. Cop. 103, 294.

Fine due on surrenderor's death before surrenderee's admittance.

One fine only due on admission of assigne of covenantee.

A surrenderee not being tenant until admittance, he cannot in the mean time pass the lands by surrender, although he may make an equitable transfer of them. *Doe* v. *Tofield*, 11 East, 246. He may also devise the lands, and they will pass in equity; *Davie* v. *Beversham*, 3 Ch. Rep. 4; but the devisee was not formerly entitled to admission as legal tenant, for a legal devise of copyholds could not be made before admittance; and therefore, although the devisee was admitted, the surrenderor or his heir still remained tenant to the lord. But equity considered the legal tenant to be a trustee for the devisee. The proper course to be pursued probably would be, for the heir of the surrenderee to be admitted, and to make a surrender to the devisee. [See *Doe* d. *Winder* v. *Lawes*, 2 Nev. & P. 212.] In *Doe* d. *Vernon* v. *Vernon*, 7 East, 8, it was held that a devisee who had been admitted, of a devisee who had not been admitted, could not maintain an ejectment at law; because, if he had any title, it was in equity.

Surrenderee may in equity, before admittance, assign or devise copyholds.

[J. It is clear that a devisee, who had not been admitted, was, previously to the recent Statute of Wills, incompetent to devise either at law or in equity. *Smith* v. *Trigg*, 1 Stra. 487; *Wainewright* v. *Elwell*, 1 Madd. 627 J.] [*Doe* d. *Winder* v. *Lawes*, 2 Nev. & P. 209. If, however, the devisee took a beneficial interest under the will, it seems to be clear that he might have devised that interest so as to bind the land in equity. Thus it was held in the case of *Davie* v. *Beversham*, 3 Ch. Rep. 2: *S. C.* nom. *Davie* v. *Beardsham*, 1 Ch. Cas. 38, that a purchaser to whose use a copyhold estate had been surrendered, might devise his equitable interest under the contract, although he died without being admitted. See *King* v. *Turner*, 2 Sim. 545; *Lewis* v. *Lane*, 2 Myl. & K. 449. In *Phillips* v. *Phillips*, 1 Myl. & K. 649, however, Sir *J. Leach*, M. R., took a distinction between a devisee of the legal estate, and a devisee of an equitable interest in copyholds; holding that the latter might devise, but the former, having not an equitable but an inchoate legal title, could not, and that a subsequent admittance did not relate back so as to set up the devise. The distinction seems to be unfounded, and is inconsistent with the use cited above, from 3 Chan. Rep.]

Devise by heir or devisee before admittance.

[It was formerly thought that an heir was incapable of devising copyholds before admittance, see *Wainewright* v. *Elwell*, 1 Madd. 632: *Rex* v. *Brewers' Company*, 3 B. & Cr. 172: *King* v. *Turner*, 2 Sim. 545. But in *Right* d. *Taylor* v. *Banks*, 3 B. & Ad. 664, a devise by an heir who had never been admitted was held good. The judgment of the Court was founded mainly upon the following passage in Coke's Copy-

24. COVENANT TO PAY ANNUITY, SECURED BY PREVIOUS SURRENDER OF COPYHOLDS, BOND, &c.

several pieces or parcels of land, situate, lying, and being at ——, within the said manor, and containing by estimation &c.

holder, sect. 41 :—"Admittances upon surrender differ from admittances upon descents in this, that in admittances upon surrender nothing is vested in the grantee before admittances, no more than in voluntary admittances; but in admittances upon descents, *the heir is tenant by copy immediately upon the death of his ancestor*, not to all intents and purposes, for peradventure he cannot be sworn of the homage before, neither can he maintain a plaint in the nature of an assize in the lord's Court before, because till then he is not complete tenant to the lord, no further forth than the lord pleaseth to allow him for his tenant:— so that to all intents and purposes the heir till admittance is not complete tenant; yet to most intents, especially as to strangers, the law taketh notice of him as a perfect tenant of the land, instantly upon the death of his ancestor; for he may enter upon the land before admittance, take the profits, punish any trespass done upon the ground, *surrender into the hands of the lord to whose use he pleaseth*, satisfying the lord his fine due upon the descent." The Court also relied upon the earlier authorities of *Brown's case*, 4 Rep. 22 b.: *Brown* v. *Dyer*, 11 Mod. 73 : *Morse* v. *Faulkener*, 1 Anst. 13 : *Doe* d. *Tofield* v. *Tofield*, 11 East, 251 : and *Wilson* v. *Weddell*, Yelv. 145, which were opposed to the few modern dicta against the heir's right. The payment of the lord's fine was consequently not a condition precedent to the exercise of the heir's right, Ib. The decision in *Right* v. *Banks*, was followed in the cases of *King* v. *Turner*, 1 Myl. & K. 456 : *Doe* d. *Povey* v. *Wilson*, 5 Ad. & El. 321 ; 6 Nev. & M. 809 ; and *Doe* d. *Winder* v. *Lawes*, 2 Nev. & P. 195 ; 7 Ad. & El. 195. And the admittance of a devisee for life under the ancestor's will made no difference, if indeed it did not amount to an admittance of the heir as reversioner, Ib. See also *Doe* d. *Taylor* v. *Crisp*, 1 Per. & D. 37. Under the recent Statute of Wills, 7 Will. 4, and 1 Vict. c. 26, sect. 3, a surrenderee or devisee is enabled to devise notwithstanding he has not been admitted ; and by ss. 4 & 5, the rights of the lord in respect of fines, &c. are protected.]

Whether lord compellable to admit the assignee of surrenderee.

[J. Mr. Watkins, in his Treatise on Copyholds, Vol. 1, p. 103, and Mr. Scriven, Treat. Cop. 120, have treated it as clear that a surrenderee may assign his interest, and that the lord would be bound to admit such assignee ; and both these writers cite the case of *Rex* v. *the lord of the Manor of Hendon*, 2 T. R. 484, as deciding the point ; to which, however, it appears not to apply. In that case B., the copyholder, covenanted to surrender to one G., in consideration of a sum of money; the covenant was presented by the homage, but no surrender was ever made. G. then assigned his interest to R., and B. surrendered to R., who now claimed to be admitted on paying a single fine. This claim was resisted by the lord, on the ground that the surrenderee should pay two fines, one in respect of the conveyance to G., and another in respect of the conveyance to himself; but the Court held that a double fine was not due. They said, that any private agreement between B. and G., not followed by a surrender of the estate, could not give the lord of the manor a right to any fine, notwithstanding that it was presented by the homage. J.]

with their appurtenances; *And* all other the lands, tenements, and hereditaments of him the said [*grantor*], holden

24. COVENANT TO PAY ANNUITY, SECURED BY PREVIOUS SURRENDER OF COPYHOLDS, BOND, &c.

[J. It will be perceived, that as B., the copyholder, had actually surrendered to R., the assignee of G., the original covenantee, the applicant's claim to be admitted by virtue of that surrender was unquestionable, and, indeed, was not denied by the lord, the only dispute being as to the fine,J.] [as to which the Court decided that a covenant to surrender gave the lord no right to call upon the covenantee to be admitted.] [J. The case is, therefore, no authority for the position, that the assignee of a surrenderee is entitled to admittance: and such a doctrine seems scarcely reconcilable with the general principles governing copyhold tenure and the relation of lord and tenant. The lord, it is conceived, would not be bound to recognise any other instrument as affecting copyhold interests than the ordinary customary assurance by surrender, and could not be compelled to admit any other person than his tenant's surrenderee; though, of course, it would be immaterial whether such surrender was made to a previous covenantee, or, as in the *Hendon case*, to his nominee. The surrenderee's interest would be assignable in equity, or, in other words, equity would compel him, in pursuance of his contract, to perfect the legal title.J.]

Remark upon *Rex* v. *Hendon*.

Whether the surrenderee has been admitted or not, if the condition be performed according to the terms of the surrender, the surrenderor may re-enter without a new admittance, and he will be in of his old estate. Gilb. Ten. 276. *Symonds* v. *Lawnd*, Cro. El. 239. In all cases, however, when the purposes for which the conditional surrender was made have been answered, in order to clear the title, it is usual for the conditional surrenderee to acknowledge satisfaction, and authorize the steward to vacate the surrender; which acknowledgment of satisfaction, the warrant to vacate, and the actual vacation of the surrender, are then entered on the rolls. 1 Watk. Cop. 116, 186, 213.

On performance of condition, surrenderor may re-enter.

On a conditional surrender for securing an annuity, it is not usual for the surrenderee to be admitted until default has been made in payment, in order to avoid the fees for admission and performance of the customary services; and unless there be a special custom in the manor by which the lord may compel a surrenderee to be admitted, he cannot, it seems, compel the surrenderee's admission, even after condition broken: *Basspool* v. *Long*, 1 Roll. Abr. 568, pl. 6; 7 Vin. Abr. 171, pl. 5; Cro. Eliz. 879; 1 Show. 30, 83: *King* v. *Dilliston*, 1 Salk. 386; Carth. 41; Prec. Ch. 573: but if there be such a custom, it seems he may compel him, and a Court of equity will not give relief. *Tredway* v. *Fatherley*, 2 Vern. 567.

Surrenderee not usually admitted until default in payment.

If the surrenderee be admitted, and the condition be broken by non-payment of the annuity, his estate will be absolute: and to re-convey the legal estate to the grantor of the annuity, a re-surrender, a re-admission, and a fine will be necessary; Gilb. Ten. 276; and the grantor will thereupon gain a new estate by purchase, and the descent be altered; so that if the lands had originally descended to him *ex parte materna*, they will afterwards descend *ex parte paterna*. *Benson* v. *Scott*, 12 Mod. 49: *Hannam* v. *Morgan*, 7 T. R. 103; Scriv. Cop. 245, 2d Ed.

If a conditional surrender becomes absolute, and the surrenderor be afterwards re-admitted, the descent will be changed.

24. COVENANT TO PAY ANNUITY, SECURED BY PREVIOUS SURRENDER OF COPYHOLDS, BOND, &c.

of the said manor by copy of court roll; *To the use* of the said [*grantee*] his heirs and assigns for ever, according to the custom of the said manor; *On Condition* that if the said [*grantor*], his heirs, executors, or administrators, should pay unto the said [*grantee*], or his assigns, during the life

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To the use of grantee.

On condition to be void on paying.

Surrenderor may release the condition and trusts to surrenderee by deed.

After the conditional surrenderee has been admitted, he becomes tenant to the lord, and the surrenderor may, before the condition be broken, release by deed to him the benefit of the condition, or make an absolute surrender to him: and after the condition is broken he may release the ulterior trusts for his benefit, or the equity of redemption in case of a mortgage: after admittance of the surrenderee, the equitable interest of the surrenderor cannot properly be extinguished by a surrender, although such surrender would probably be held to operate as a release. In either of these cases, the conditional surrenderee being already in possession, and having paid his fine for admission, no additional fine to the lord on the surrenderor's release would be due. *Kite* v. *Queinton*, 4 Co. 25: *Hull* v. *Sharbrook*, Cro. Jac. 36; Hale, MS. n. Co. Litt. 59. a, (2).

Surrenderee must be admitted before he can recover in ejectment.

Before the surrenderee can recover the possession in ejectment, he must be admitted; but he may recover upon a demise laid between the date of the surrender and admittance; the title of the surrenderee, after admittance, being perfect from the time of the surrender, and relating back to it as against all persons, besides the lord; 1 T. R. 601; and it is sufficient if the lessor of the plaintiff be admitted at any time before the trial; for the admittance is only a circumstance required by law merely for the sake of the lord: *Benson* v. *Scott*, 1 Salk. 185: *Roe* v. *Hicks*, 2 Wils. 15: *Vaughan* v. *Atkins*, 5 Burr. 2786: *Doe* v. *Bennington*, 16 East, 208. [*Doe* d. *Winder* v. *Lawes*, 2 Nev. & P. 211. See *Phillips* v. *Phillips*, 1 Myl. & K. 649.] [J. And has been decided not to be requisite where the grant proceeds from the lord himself. *Roe* d. *Cosh* v. *Loveless*, 2 B. & Al. 453.J.] [So, where A. made a conditional surrender of a copyhold estate to the use of W. to secure a debt, and afterwards made an absolute surrender to the use of G. as a purchaser for value, upon which G. was admitted, and then W. was admitted; it was held that W. was entitled to recover an ejectment against G. *Doe* d. *Wheeler* v. *Gibbons*, 7 Car. & P. 161. See also *Burgaine* v. *Spurling*, Cro. Car. 283: *Horlock* v. *Priestly*, 2 Sim. 75, *infra*, Vol. 5, p. 473 n.]

Action for mesne profits.

The surrenderee may recover the mesne profits from the surrenderor when he is the defendant in ejectment, from the time of the surrender, on the equitable principle that the surrenderor is considered as a trustee for the surrenderee. *Holdfast* d. *Woollams* v. *Clapham*, 1 T. R. 600: *Roe* v. *Hicks*, 2 Wils. 15. So the grantee of an annuity, after a recovery in ejectment against a tenant in possession under a demise from year to year, and after giving notice to the tenant of his title, and requiring him to attorn and to pay the rent remaining in his hands, may maintain an action for use and occupation against the tenant for all rent in his hands at the time of the notice, and down to the day of the demise in the ejectment; but not afterwards. *Birch* v. *Wright*, 1 T. R. 378.

of him the said [*grantee*], *One* annuity or yearly sum of £—— of lawful British money, free from taxes, and clear of all other deductions whatsoever, by equal quarterly payments, on the —— day of ——, &c., in every year; the first payment to be made on the —— day of —— next ensuing the date thereof; *And also* if the said [*grantor*], his heirs, executors, or administrators, should pay (*a proportional part, ut ante, p.* 208). *Or* if the said [*grantor*], his executors, administrators, or assigns, should re-purchase the said annuity upon the terms and conditions therein and hereinafter mentioned, *Then* and in either of the said cases the said surrender should be void. And whereas the said [*grantor*] hath by his bond or obligation in writing under his hand and seal, bearing even date with these presents, become bound unto the said [*grantee*] in the sum of [*double the purchase-money*]: *With a condition* thereunder written for making the same void, if the said [*grantor*], his heirs, executors, administrators, or assigns, should pay the said annuity, in manner therein and in the said surrender mentioned and appointed for the payment thereof; *Or* should repurchase the said annuity upon the terms and conditions therein and hereinafter mentioned. And whereas the said [*grantor*] hath executed a warrant of attorney, bearing even date with these presents, authorising and empowering certain attornies therein named, to confess a judgment against him in her Majesty's Court of Queen's Bench at Westminster, in an action of debt upon the said bond, at the suit of the said [*grantee*], for the said sum of [*penalty of bond*] and costs of suit. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— of lawful British money, to the said [*grantor*] paid by the said [*grantee*], at or before the sealing and delivery of these presents, in manner following, that is to say; by a bill of exchange (*c*), bearing date the —— day of —— instant,

24. COVENANT TO PAY ANNUITY, SECURED BY PREVIOUS SURRENDER OF COPYHOLDS, BOND, &c.

annuity for grantee's life,

or on repurchase

of bond,

of warrant of attorney;

Testatum.

Consideration paid

by a bill of exchange,

(*c*) If the consideration, or any part of it, be paid in notes, and any of the notes, with the consent of the person advancing the same, shall not be paid when due, or shall be cancelled or destroyed without being first paid, the grantee may be prevented from recovering the annuity. 53 Geo. 3, c. 141, s. 6, *ante*, p. 83.

Payment of consideration in bills of exchange should be avoided if possible.

In cases of this kind, which are of very rare occurrence, it was usual prior to the recent alteration of the usury laws, for the grantee to pay the grantor interest at 5*l.* per cent. on the bill until it becomes due;

24. COVENANT TO PAY ANNUITY, SECURED BY PREVIOUS SURRENDER OF COPYHOLDS, BOND, &c.

drawn by the said [*grantee*] upon, and accepted by [*acceptor*], for the said sum of £——, payable to the said [*grantee*], or order, —— months after the date thereof, and by the said [*grantee*] indorsed to the said [*grantor*]; *And also* the sum of £——, being lawful interest on the said bill of exchange, from the day of the date of these presents until the day of actual payment thereof; the receipt of which sum of £—— he the said [*grantor*] doth hereby acknowledge, and of and from the same sum, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*grantee*], his executors, administrators, and assigns.

Covenant to pay annuity.

He the said [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, will or shall from time to time pay unto the said [*grantee*], his executors, administrators, or assigns, the said annuity or yearly sum of ——, and all such proportional part thereof as aforesaid, free from taxes and clear of all other deductions whatsoever, at the days and times, and in manner and form hereinbefore mentioned and expressed or referred to for payment thereof; AND *it is hereby declared and agreed,* that the said [*grantee*], his heirs and assigns, shall stand seised and possessed of the said several pieces or parcels of land and hereditaments, UPON THE TRUSTS, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements hereinafter mentioned, expressed, and declared, of and concerning the same, that is to say; (*Add trusts for grantor until default in payment; and on default in payment, trusts for sale, &c. ut ante, p.* 210 to 215). AND THE SAID [*grantor*], for himself, his heirs, executors, and administra-

Declaration of trust of copyhold premises previously surrendered to the grantee's use.

Covenant that grantor was seised.

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but that is not an adequate remuneration for the delay in the actual payment of the consideration money, in those cases where the annuity commences from the date of the security, because the growing payments on the annuity are oftentimes more than double that rate of interest. In short, the consideration should never be paid in that manner if it can be possibly avoided; for although such a mode of payment is strictly legal in a bonâ fide transaction, yet it is always looked on with suspicion. [A higher rate of interest than 5*l.* per cent. may now be made payable upon a bill or note, in which the consideration for an annuity is paid; notwithstanding the annuity may be charged on land, for the sum for which the note is given is not so secured. See stats. 2 & 3 Vict. c. 37; 3 & 4 Vict. c. 83; *infra,* Vol. 6, p. 278.]

tors, doth hereby further covenant and agree with the said [*grantee*], his heirs and assigns, That he the said [*grantor*], at the time of making the said surrender, was lawfully and rightfully seised of and in, or well entitled unto, the several pieces or parcels of land, hereditaments, and premises, thereby surrendered, or intended so to be, of a good estate of inheritance in possession according to the custom of the said manor, without any condition, trust, power of revocation, limitation of new or other use or uses, or any other restraint, matter, cause, or thing whatsoever, which could or might defeat, alter, change, charge, revoke, determine, make void, or incumber the same, or any part or parts thereof; AND ALSO that he the said [*grantor*] had in himself good right, full power, and lawful and absolute authority, to surrender all and singular the several pieces or parcels of land, hereditaments, and premises, so surrendered as aforesaid, with the appurtenances, to the use of the said [*grantee*], his heirs and assigns, for ever, upon the trusts, and to and for the intents and purposes hereinbefore mentioned, expressed, and declared of and concerning the same, according to the true intent and meaning of these presents: AND FURTHER, that the said several pieces or parcels of land, hereditaments, and premises, shall and lawfully may from time to time and at all times hereafter, from and after default shall be made in payment of the said annuity, remain, continue, and be, to the use of the said [*grantee*], his heirs and assigns, upon, to, and for the same trusts, intents, and purposes, and shall and may be accordingly, peaceably, and quietly had, held, and enjoyed, without the lawful let, suit, hinderance, interruption, or denial, of him the said [*grantor*], his heirs or assigns, or any other person or persons whomsoever: AND free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise, by him the said [*grantor*], his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all and all manner of titles, charges, and incumbrances whatsoever, had, made, done or committed, or willingly suffered by the said [*grantor*], or any other person or persons whomsoever: AND MOREOVER, That he the said [*grantor*] and his heirs, and all and every other person and persons whosoever, having or lawfully claiming, or who shall or may hereafter have or lawfully claim, any estate, right, title, trust, or

24. COVENANT TO PAY ANNUITY, SECURED BY PREVIOUS SURRENDER OF COPYHOLDS, BOND, &c.

And had good right to surrender.

And in default in paying annuity, premises to remain to grantee upon the trusts declared, free from incumbrances;

and for further assurance.

24. COVENANT TO PAY ANNUITY, SECURED BY PREVIOUS SURRENDER OF COPYHOLDS, BOND, &c.

interest of, in, to, or out of the said several pieces or parcels of land, hereditaments, and premises, or any of them, or any part thereof, will and shall from time to time and at all times hereafter, at and upon the reasonable request of the said [*grantee*], his heirs, executors, administrators, or assigns, but at the proper costs and charges of the said [*grantor*], his heirs, executors, or administrators, make, do, and execute, or cause and procure to be made, done, and executed, all such further and other lawful acts, things, conveyances, surrenders, and assurances in the law whatsoever, for further, better, more perfectly, and absolutely surrendering and assuring the said several pieces or parcels of land, hereditaments, and premises, with their and every of their rights, members, and appurtenances, to the use of the said [*grantee*], his heirs and assigns, for ever, upon the trusts, and to and for the intents and purposes hereinbefore mentioned, expressed, and declared of and concerning the same, *As* by the said [*grantee*], his heirs, executors, administrators, or assigns, or his or their counsel learned in the law, shall be devised or advised and required. (*Add defeazance on the judgment, ut ante*, p. 216; *and power to repurchase, ut ante*, p. 206 *or* 218). IN WITNESS &c.

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25. COVENANT TO SURRENDER WIFE'S COPYHOLD OF INHERITANCE.

25. COVENANT *by the Grantor of an* ANNUITY *for the Lives of three Nominees, that he and his* WIFE *will* SURRENDER *her* COPYHOLD *Estate of Inheritance, as a collateral Security, Upon Trusts for Sale, &c., with the ultimate Trust for the Wife and her Heirs.*

Parties.

THIS INDENTURE, made &c., BETWEEN [*grantor*], of &c., and [*wife*], his wife, of the one part; and [*grantee*], of &c., of the other part.

Recital of seisin in fee of customary lands in right of wife;

WHEREAS the said [*grantor*] and [*wife*] his wife, in the right of the said [*wife*], are seised of or well entitled to the inheritance in possession, according to the custom of the manor of ——, in the county of —— aforesaid, of and in the several messuages, tenements, cottages, lands, hereditaments, and premises hereinafter covenanted to be surrendered.

of contract for annuity.

AND WHEREAS the said [*grantee*] hath contracted with the said [*grantor*], for the purchase of

an annuity of £——, to be paid to the said [*grantee*], his executors, administrators, and assigns, during the lives of [*nominees*], of &c., and the lives and life of the survivors and survivor of them, at the price of £——; AND upon the treaty for the purchase of the said annuity, it was agreed that the same should be secured by the bond or obligation of the said [*grantor*], and a warrant of attorney for entering up judgment thereon, and by the covenant of the said [*grantor*], and by a surrender of the said several copyhold hereditaments, and premises, upon the condition and trusts hereinafter mentioned: (*Recite annuity bond and warrant of attorney, ut ante*, p. 208, 209). NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— of lawful British money by the said [*grantee*] to the said [*grantor*], paid, at or before the sealing and delivery of these presents, The receipt and payment whereof he the said [*grantor*] doth hereby acknowledge; and from the same and every part thereof doth acquit, release, and discharge the said [*grantee*], his heirs, executors, administrators, and assigns, and every of them for ever, by these presents; *He* the said [*grantor*], with the approbation of the said [*wife*], his wife, doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantee*], his heirs, executors, administrators, and assigns, that he the said [*grantor*], and [*wife*], his wife, and all other persons having any estate or interest therein, will and shall, at the request of the said [*grantee*], his heirs, executors, administrators, or assigns, but at the costs and charges of the said [*grantor*] (*a*), surrender into the hand of the lord or lords, lady or ladies, of the said manor of ——, for the time being, according to the custom of the same manor, ALL THOSE several messuages, tenements, cottages, lands, hereditaments, and premises, situate, &c., with their and every of their rights, members, and appurtenances, TO THE USE of the said [*grantee*], his heirs and assigns for ever, at the will of the lord or lords, lady or ladies, according to the custom of the said manor; *Nevertheless* UPON CONDITION, that if the said [*grantor*], or

25. COVENANT TO SURRENDER WIFE'S COPYHOLD OF INHERITANCE.

To be secured by grantor's bond; warrant of attorney and covenant; and a surrender of wife's customary lands.

Testatum.

Covenant by grantor, that he and wife will surrender her copyholds.

(*a*) When the wife's estate is to be a security for an annuity, the surrender should generally be actually made before paying the purchase-money, for fear of the husband's death before the surrender is made. *Vide ante*, p. 220, n. (*b*).

25. COVENANT TO SURRENDER WIFE'S COPYHOLD OF INHERITANCE.

[*wife*] his wife, or his or her heirs, executors, or administrators, should pay the said annuity or yearly sum of £—— on the days and times and in the manner in the said bond or obligation mentioned and appointed for payment thereof, then the said surrender shall be void. AND *it is hereby declared and agreed,* that he the said [*grantee*], his heirs and assigns, shall stand seised and possessed of the said hereditaments and premises hereinbefore mentioned; UPON TRUST, to permit and suffer the said [*grantor*], and [*wife*], his wife, and the heirs and assigns of the said [*wife*], to receive and take the yearly and other rents, issues, and profits thereof, to his, her, and their own use and benefit, until some default shall be made of or in payment of the said annuity, or some part thereof, on the days or times, and in manner mentioned and appointed for payment thereof as aforesaid. (*Add trusts for sale, &c., ut ante,* p. 210); *And subject* to the trusts hereinbefore declared concerning the money so to be invested or laid out at interest as hereinbefore mentioned, the same and the interest thereof, or so much thereof, and of the interest thereof, as shall not be applied in answering such trusts as are hereinbefore declared thereof, shall be IN TRUST for the said [*wife*], the wife of the said [*grantor*], her heirs and assigns. AND *it is further declared and agreed,* that after the decease of the survivor of them the said [*nominees*], and full payment unto the said [*grantee*], his executors, administrators, or assigns, of the said annuity, and such proportional part thereof, and costs, charges, damages, and expenses as aforesaid, the several hereditaments and premises hereby covenanted to be surrendered as aforesaid, or so much thereof (if any) as shall not be disposed of under or in pursuance of the trusts hereinbefore declared or expressed, shall be in trust for the said [*wife*], the wife of the said [*grantor*], her heirs and assigns for ever, and shall be assigned and surrendered as she or they shall direct or appoint. (*Add declaration that conveyances, &c. made by the said grantee, his heirs or assigns, shall be as valid as if the said grantor, and —— his wife, or either of them, or the heirs of the said [wife] had joined therein; grantee's receipts to be sufficient discharges; and indemnity clause to grantee; and covenant by grantor to pay annuity, ut ante,* p. 215). AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*grantee*], his heirs and assigns, that he the said

Trusts for sale, &c.

Monies produced by sale to be in trust for wife and her heirs.

Covenants for title, &c.

[*grantor*] and [*wife*] his wife, have in themselves good right, &c., (*ut ante*, p. 215; *for further assurance from the grantor and his wife, and the heirs of the wife; and defeazance on judgment, ut ante*, p. 216: *and clause for repurchasing the annuity, ut ante*, p. 206 *or* 218). In witness &c.

25. COVENANT TO SURRENDER WIFE'S COPYHOLD OF INHERITANCE.

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26. GRANT *of a personal* ANNUITY *for the Life of the Grantor, in which* TWO SURETIES *join;* DEFEAZANCE *on Judgment; and Power to* REPURCHASE.

26. GRANT AND COVENANT, WITH TWO SURETIES, DEFEAZANCE, &c.

THIS INDENTURE, made &c., BETWEEN [*grantor*], of &c., [*surety*], of &c., and [*other surety*], of &c., of the one part; and [*grantee*], of &c., of the other. (*Recital of contract, ut ante*, p. 219). AND WHEREAS upon the treaty for the purchase of the said annuity, it was agreed that the same should be secured by these presents, and also by the bond and warrant of attorney to confess judgment of the said [*grantor*] and [*surety*], and [*other surety*], who had agreed to join therein as sureties for the said [*grantor*], in securing the payment of the same annuity or yearly sum. AND WHEREAS, in pursuance of the said agreement, the said [*grantor*], [*surety*], and [*other surety*], by their bond or obligation in writing, bearing even date with these presents, and any two and each of them, have and hath become jointly and severally bound unto the said [*grantee*], in the sum of [*double the purchase-money*]: *With* a condition thereunder written for making void the same, if the said [*grantor*] and [*sureties*], or any or one of them, or the heirs, executors, or administrators of them or any or one of them, should pay unto the said [*grantee*], his executors, administrators, or assigns, during the life of him the said [*grantor*], one annuity or yearly sum of £——, free from taxes, and clear of all other deductions, by equal quarterly payments, on the —— day of —— &c., the first payment to be made on the —— day of —— next ensuing the date of the said bond or obligation: *And also* if the heirs, executors, or administrators of the said [*grantor*], or the said [*sureties*], or either of them, or the heirs, executors, or administrators of them or either of them, should pay unto the said [*grantee*], his

Parties.

Recital of contract for sale of annuity;

of bond from three to one, for paying annuity;

26. GRANT AND COVENANT, WITH TWO SURETIES, DEFEAZANCE, &C.

executors, administrators, or assigns, in case the said [*grantor*] should happen to depart this life on any day on which any quarterly payment of the said annuity should become due, the whole of such quarterly payment: And if on any other day, a proportional part of the said annuity up to the day of the death of the said [*grantor*]; AND WHEREAS in further pursuance of the said agreement, the said [*grantor*] and [*sureties*] have executed a warrant of attorney, bearing even date with the said bond or obligation, and these presents, thereby authorizing and empowering certain attornies therein named to confess a judgment (*b*) against them in her Majesty's Court of ——, in an action of debt upon the said bond, for the said sum of [*double the purchase-money*] and costs of suit; NOW THIS INDENTURE WITNSSETH, that, in further pursuance of the said agreement, and in consideration of the sum of £—— of lawful British money, by the said [*grantee*] paid to the said [*grantor*], at or before the sealing and delivery of these presents, the receipt whereof the said [*grantor*] doth hereby admit and acknowledge, and from the same doth acquit, release, and for ever discharge the said [*grantee*], his executors, administrators, and assigns, [*And also* in consideration of the sum of 10*s.* to each of them the said [*sureties*], paid by the said [*grantee*], at or before the sealing and delivery of these presents; the receipt whereof they the said [*sureties*] do, and each of them doth hereby acknowledge;] THEY the said [*grantor*] and [*sureties*] *do*, and each and every of them *doth*, grant, bargain, sell, and confirm, unto the said [*grantee*], his executors, administrators, and assigns, for and during the natural life of him the said [*grantor*], ONE annuity or yearly sum of £—— of lawful British money, TO HAVE, hold, receive, take, and enjoy the said annuity or yearly sum of £——, and every part thereof, henceforth, during the life of him the said [*grantor*], to be paid and payable unto the said [*grantee*], his executors, administrators, and assigns, by four equal quarterly payments, on the —— day of ——, &c., the first payment thereof to be made on the —— day of —— next, without any deduction or abatement whatsoever, *Together* with a proportional part of the said annuity for the time which shall elapse between the

of warrant of attorney;

Testatum.

Grant of annuity by three to one.

(*a*) *Vide* reasons for preferring several judgments to a joint judgment, *infra*, Vol. 5, p. 54.

26. GRANT AND COVENANT, WITH TWO SURETIES, DEFEAZANCE, &c.

last of the said days of payment preceding the day of the decease of the said [*grantor*], to the day of such his decease, as in the condition to the said bond or obligation is mentioned. AND THE SAID (*b*) [*grantor*] and [*sureties*] do hereby for themselves, their heirs, executors, and administrators, jointly: *and* any two (*c*) of them, separately and apart from the other of them, do hereby for themselves, their heirs, executors, and administrators, jointly; *and* each of them separately and apart from the others and other of them, doth hereby for himself, his heirs, executors, and administrators, severally covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that they the said [*grantor*] and [*sureties*], or some or one of them, or the heirs, executors, or administrators of them or some or one of them, will or shall pay, unto the said [*grantee*], his executors, administrators, or assigns, during the life of the said [*grantor*], the said annuity or yearly sum of £——, on the days and times, and in manner and form hereinbefore limited and appointed, or referred to, for the payment thereof, together with such proportional part thereof as aforesaid. AND *it is hereby agreed and declared* that the judgment so to be entered up against the said [*grantor*], [*surety*], and [*other surety*], as aforesaid, shall be considered only as a further security to the said [*grantee*], his executors, administrators, and assigns, for the said annuity; *And* that no execution or executions shall be issued or taken out upon the said judgment, unless and until the same annuity, or some part thereof, shall be in arrear or unpaid for the space of twenty-one days: *And* that in case, and when and so often as the said annuity, or any part thereof, shall be in arrear or unpaid for the space of twenty-one days next after

Joint and several covenant to pay annuity from three to one.

Defeazance on judgment.

(*b*) If there be only one surety, the covenant may be—

"AND THE SAID [*grantor*] and [*surety*] do hereby, for themselves, their heirs, executors, and administrators; *and* each of them doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantee*], his executors, administrators, and assigns; that they the said [*grantor*] and [*surety*], or one of them, or the heirs, executors, or administrators of them or one of them, will" &c., *ut supra.*

Covenant to pay annuity from two to one jointly and severally.

(*c*) *Vide ante*, Vol. 1, p. 688, n. (*a*); *infra*, title "BOND."

26. GRANT AND COVENANT, WITH TWO SURETIES, DEFEAZANCE, &c.

any of the said days or times on which the same ought to be paid as aforesaid, then, and so often, it shall be lawful for the said [*grantee*], his executors, administrators, or assigns, to sue out such execution or executions upon or by virtue of the said judgment, as he or they shall think fit, for the recovery of the arrears of the said annuity or yearly sum, and all expenses, if any, to be occasioned by the non-payment thereof: And that it shall not be necessary for the said [*grantee*], his executors, administrators, or assigns, to revive, or cause the said judgment to be revived, or to do any act, matter, or thing, to keep the same on foot, notwithstanding the said judgment shall have been entered on record for the space of one year or upwards; *and* notwithstanding any rule or practice of the said Court of —— to the contrary: *And* that they the said [*grantor*], *surety*, and [*other surety*], any or one of them, or the heirs, executors, administrators, or assigns of them, or any or one of them, will not, nor shall have, take, receive, or attempt, by any ways or means, to have or receive any advantage for want of reviving or keeping the said judgment on foot. AND THE SAID [*grantee*] doth for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantor*] and [*sureties*], and each and every of them, and the heirs, executors, and administrators of them, and each and every of them, that in case the said [*grantor*] and [*sureties*], any or one of them, or the heirs, executors, or administrators of either of them the said [*sureties*], should be desirous of repurchasing the said annuity; and of such intention should give —— months' notice in writing unto the said [*grantee*], his executors, administrators, or assigns, then, and in such case, he the said [*grantee*], his executors, administrators, or assigns, upon the expiration of the said —— months, for which such notice shall be so given as aforesaid, on receiving full payment of the said annuity, and all arrears thereof, up to and including the day of repurchasing the same, together with a proportional part of the same annuity in case such repurchase should be made on any other day than one of the said quarterly days of payment, for the time which shall have elapsed from the then last preceding quarterly day of payment, up to and including the day of such repurchase; And all and every sums and sum of money, if any, which shall be then due for or on account of any expenses occasioned by the non-payment thereof, accept and take the sum of £——, in

Power to repurchase, where there are two sureties.

full for the repurchase of the said annuity; *And* the said [*grantee*], his executors, administrators, or assigns, will or shall thereupon, at the costs and charges in the law of the person or persons requiring the same, release, assign, or otherwise dispose of the same annuity or yearly sum, and all the securities for the same, as the person or persons making such repurchase shall in that behalf direct or appoint. (*Add clause, that if repurchase be made by sureties, annuity shall continue for their benefit, subject to the like right of the grantor to repurchase, ut ante*, pp. 180, 190). In witness &c.

26. GRANT AND COVENANT, WITH TWO SURETIES, DEFEAZANCE, &c.

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27. GRANT *of* ADDITIONAL ANNUITY *for the Lives of* TWO NOMINEES, *by Indorsement on the original Grant; charged on a* LEASEHOLD *Estate thereby assigned to Trustees; with additional Power of Distress; Covenants for* INSURANCE *against* FIRE; *Declaration that Judgment is to be a Security for additional Annuity; Power to repurchase, &c.*

27. GRANT OF ADDITIONAL ANNUITY BY INDORSEMENT.

THIS INDENTURE, made &c., BETWEEN the within-named [*grantor*], of the one part; and the within-named [*grantee*], of the other part. WHEREAS the said [*grantee*] hath agreed with the said [*grantor*] for the purchase of an annuity or yearly sum of £——, payable during the lives of the within-named [*nominees*], and during the life of the longest liver of them, at the price of £——. AND WHEREAS upon the treaty for the purchase of the said annuity it was agreed that the same should be charged upon the pieces or parcels of ground, messuages or tenements, and premises (*a*)

Parties.

Recital of contract for purchasing additional annuity;

to be charged on premises charged with original annuity;

and further se-

(*a*) The property being leasehold, the word *hereditaments* instead of *premises* would not be technically correct: because the word *hereditament*, in the most usual and proper sense, is applied only when the estate therein is of freehold or inheritance, and which not being devised descends to the *heir;* and is not applied to a chattel interest, for that vests in the executor or administrator. Noy's Tenures, 54, 6th Ed., 356; Cowel's Interpreter, tit. *Hereditaments.* [*Sed vide contrà*, Prest. Shepp. Touchst. 74. The word *Hereditaments* appears to be properly applicable to leasehold parcels, as denoting the nature of the property, and not the estate in it.]

The word *hereditament* whether properly applied to a chattel interest.

27. GRANT OF ADDITIONAL ANNUITY BY INDORSEMENT.

within mentioned and described, *And* by the judgment to be entered up upon the within-recited warrant of attorney. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— of lawful British money, paid by the said [*grantee*] to the said [*grantor*], on the —— day of —— now last past; the receipt whereof he the said [*grantor*] doth hereby acknowledge, and from the same doth acquit, release, and discharge the said [*grantee*], his executors, administrators, and assigns; HE the said [*grantor*] by these presents doth grant and confirm unto the said [*grantee*], his executors, administrators, and assigns, an annuity or yearly sum of £—— of lawful British money, to be paid and payable during the lives of the said [*two nominees*], and during the life of the longest liver of them; and to be charged and chargeable upon, and issuing and payable out of the pieces or parcels of ground, messuages or tenements, and premises, mentioned and described in the within-written indenture; and to be paid and payable to the said [*grantee*], his executors, administrators, and assigns, in the common dining-hall of Lincoln's Inn, in the county of Middlesex, by two equal half-yearly payments in the year, on the —— day of ——, and the —— day of ——, in each and every year, the first payment to be made on the —— day of —— next; *Together* with a proportional part of the said annuity, up to and including the day of the death of the longest liver of them the said [*nominees*]; such proportional part to be paid and payable immediately after the decease of such longest liver. TO HOLD, receive, perceive, and take the said annuity or yearly sum of £——, and every part thereof, unto the said [*grantee*], his executors, administrators, and assigns, for and during the lives of the said [*nominees*], and during the life of the longest liver of them, free from all taxes, deductions, and abatements thereout whatsoever. AND for the better and more effectually securing the due payment of the said annuity, *he* the said [*grantor*] *doth* give and grant unto the said [*grantee*], his executors, administrators, and assigns, full power and authority, when and so often as the said annuity, or any part thereof, shall be in arrear and unpaid by the space of fourteen days next after any of the said days or times appointed for payment thereof, to enter into and upon the pieces of ground, messuages or tenements, and premises within mentioned and described, or into and upon any part thereof, and there to take and

cured by judgment on original warrant of attorney.

Testatum.

Consideration previously paid.

Grant of additional annuity;

charged on premises within-mentioned;

and payable half-yearly.

Habendum.

Power of distress.

27. GRANT OF ADDITIONAL ANNUITY BY INDORSEMENT.

distrain any goods, chattels, and effects which may be found thereon; and in making any such distress or distresses, to act therein in all respects as landlords are entitled to do in making distresses for rent in arrear; To the intent that by such distress or distresses, or otherwise, all arrears of the said annuity, and all costs, charges, damages, and expenses, which the said [*grantee*], his executors, administrators, or assigns, may sustain, or be put unto, by reason of the non-payment of the said annuity, or any part thereof, on the days or times appointed for payment of the same, and also all expenses attending the making of any such distress or distresses, may be fully paid and satisfied. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, or some or one of them, will or shall during the lives of the said [*nominees*], and during the life of the longest liver of them, pay unto the said [*grantee*], his executors, administrators, or assigns, the said annuity or yearly sum of £——, on the days or times hereby appointed for payment thereof, without making any deduction or abatement thereout whatsoever. AND *it is hereby declared and agreed*, that the within-named [*trustees*], or the survivor of them, his executors and administrators, and the trustees and trustee for the time being acting in the trusts of the within-written indenture, shall stand and be possessed of the pieces or parcels of ground, messuages or tenements, and premises within mentioned and described, with their and every of their appurtenances, as well for the purpose of securing the payment of the annuity or yearly sum of £—— hereby granted, as for securing the payment of the within-mentioned annuity or yearly sum of £——. AND *it is also agreed*, that for the purpose of securing the payment of the annuity hereby granted, the said [*trustees*], and the survivor of them, and the executors and administrators of such survivor, and the trustees and trustee for the time being acting in the trusts of the within-written indenture, shall in all respects have such and the same powers and authorities as are given to them by the within-written indenture, for the purpose of securing the within-mentioned annuity, anything in the within-written indenture contained to the contrary thereof notwithstanding. AND THE SAID [*grantor*], for himself, his

Covenant to pay annuity.

Trustees to hold premises upon trust to secure additional annuity;

and to have same powers for securing additional annuity as for securing original annuity.

Covenant by

27. GRANT OF ADDITIONAL ANNUITY BY INDORSEMENT.

heirs, executors, and administrators, doth hereby covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that in case any sale should be made of the pieces or parcels of ground, messuages or tenements, and premises within mentioned and described, or of any part or parcel thereof, for the purpose of providing for the payment of the annuity hereby granted, then, and in such case, he the said [*grantor*], his executors, administrators, or assigns, will or shall, if requested, join and concur in the making thereof, and in executing the assignments and assurances of the premises which may be so sold to the purchaser or purchasers thereof, and enter into all usual and reasonable covenants with such purchaser or purchasers, his, her, or their executors, administrators, and assigns, for the estate, title, possession, and further assurance of the premises which may be so sold, and do all other reasonable acts for confirming such sale or sales: NEVERTHELESS, *it is hereby declared*, that the concurrence of the said [*grantor*], his executors, administrators, or assigns, in any such sale or sales, assignments or assurances, shall not in anywise be deemed or considered as essential or necessary to perfect the title of such purchaser or purchasers; the same being only intended for his, her, or their more perfect satisfaction. AND THE SAID [*grantee*], for himself, his heirs, executors, and administrators, doth hereby further covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, will or shall, from time to time, and at all times hereafter, so long as the annuity hereby granted shall remain payable, insure and keep insured, in some good public fire insurance office in London or Westminster, upon the messuages or tenements, and buildings within mentioned and described, the sum of £—— over and above the within-mentioned sum of £——, within agreed to be insured thereon, so long as the within-mentioned annuity continues payable: AND that he the said [*grantor*], his executors, administrators, or assigns, at his or their own expense, will or shall, immediately upon the making and renewing of every policy of such insurance, assign the same and the benefit thereof (*b*) unto the said

grantor to join in conveyance to purchasers, and enter into usual covenants with them;

but such concurrence not to be considered as necessary to perfect the title.

Covenant to insure buildings from fire in an additional sum;

and to assign policies to grantee.

It seems preferable for grantor to effect insurance in grantee's name.

(*b*) To prevent the trouble and expense of assigning the policy of insurance, it seems to be advisable for the grantor to covenant to effect the insurance in the name of the grantee, his executors, administrators, and assigns, as in the form, *infra*, precedent No. 30.

[*grantee*], his executors, administrators, or assigns: PROVIDED ALWAYS, that if the said [*grantor*], his heirs, executors, or administrators, should, at any time during the continuance of the annuity hereby granted, refuse or neglect to insure the said sum of £—— (over and above the said sum of £——, so long as the within-mentioned annuity continues payable) or to make such assignments of the policy or policies so to be made and taken as aforesaid; then and so often it shall and may be lawful for the said [*grantee*], his executors, administrators, and assigns, in like manner to insure the said sum of £——, or any less sum, (over and above the said sum of £——, so long as the within-mentioned annuity shall continue payable), and for such length of time as he or they shall think proper: AND *it is hereby declared and agreed*, that all sums of money which shall be recoverable on any such policy of insurance as aforesaid shall forthwith be laid out and expended in rebuilding or repairing the premises insured, or such of them as may be destroyed or injured by fire, in order the better to secure the due payment of the annuity hereby granted. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, will or shall, upon demand in writing left at his or their usual place or places of abode, pay and satisfy unto the said [*grantee*], his executors, administrators, or assigns, the premiums, costs, and charges, which he the said [*grantee*], his executors, administrators, or assigns, or any of them, shall expend or be put unto in or about the making or effecting of any such insurance as aforesaid, or in or about the receiving or recovering of the money thereby recoverable. AND *it is hereby declared and agreed*, that in case the said [*grantor*], his heirs, executors, or administrators, should make default in payment of such last-mentioned costs, charges, and expenses, by the space of fourteen days next after any such demand shall be made as aforesaid, then and in every such case the same, with interest thereupon after the rate of £5 per centum per annum, from the respective times at which the said [*grantee*], his executors, administrators, or assigns, or any of them, shall pay or expend the same, shall be levied and raised, either by distress, or in such other way as is hereinbefore mentioned or referred to, with respect to the arrears of the annuity hereby

27. GRANT OF ADDITIONAL ANNUITY BY INDORSEMENT.

If grantor neglect, grantee may insure.

Monies to be received under policies to be expended in rebuilding premises.

Covenant by grantor to repay sums paid by grantee for insurance.

Power to grantor to recover sums paid for insurance by distress, &c.

27. GRANT OF ADDITIONAL ANNUITY BY INDORSEMENT.

granted, any thing hereinbefore contained to the contrary thereof notwithstanding: Provided nevertheless that the total amount of the principal monies to be recoverable by virtue of the power lastly hereinbefore contained shall not exceed the sum of £200 (*c*). AND *it is further declared and agreed* that the judgment to be entered up upon the within-recited warrant of attorney, shall be considered as a security as well for the payment of the annuity hereby granted, as for the payment of the within-mentioned annuity. AND *it is also agreed,* that when and so often as the annuity hereby granted, or any part thereof shall be in arrear and unpaid by the space of twenty-one days next after any of the days or times appointed for payment thereof, then and in every such case it shall be lawful for the said [*grantee*], his executors, administrators, and assigns, to sue out such execution or executions upon the said judgment, as he or they shall think fit or be advised, for the recovery of the arrears of such annuity, and all costs, charges, and expenses which he the said [*grantee*], his executors, administrators, or assigns, or any of them, shall sustain or be put unto by reason or in consequence of the non-payment thereof. AND *it is also agreed,* that it shall not be necessary to revive or cause the said judgment to be revived, or to do any act, matter, or thing to keep the same on foot, notwithstanding the same shall have been entered on record for the space of one year or upwards, and notwithstanding any rule or practice of the Court in which the said judgment shall be entered on record to the contrary. PROVIDED ALWAYS, that in case the said [*grantor*], his heirs, executors, or administrators, should at any time hereafter be desirous of repurchasing the annuity hereby granted, and of such his or their intention should give unto the said [*grantee*], his executors, administrators, or assigns, notice in writing, by the space of six calendar months, or leave the same at his or their usual place or places of abode, then and in such case the said [*grantee*], his executors, administrators, or assigns, will or shall, at the expiration of the said period of six calendar months, on receiving all sums of money which shall be due for arrears of

Judgment to be entered on original warrant of attorney, to be a further security for additional annuity.

Power to sue out execution on judgment after default.

Without reviving judgment.

Power to repurchase.

(*c*) [As to the necessity of a limitation of this nature, *vide post,* Vol. 5, p. 520. An *ad valorem* stamp, applicable to a mortgage for £200, should be affixed to the deed, in addition to the stamp for the grant of an annuity.]

the said annuity, together with a proportional part of the same annuity, from the last day of payment next preceding such repurchase up to and including the day of repurchasing the same, accept and take the sum of £—— in full for the repurchase of the annuity hereby granted: *And* on receipt of the said sum of £——, and all arrears of the said annuity and such proportional part thereof as aforesaid, the annuity hereby granted, and every part thereof, and all powers and authorities herein contained for enforcing the payment thereof, shall cease, determine, and be absolutely void, any thing herein contained to the contrary thereof notwithstanding. AND *it is hereby declared and agreed,* that the said [*trustees*], and the survivor of them, and the executors and administrators of such survivor, and the trustees and trustee for the time being acting in the trusts hereof, shall and may out of the said trust monies and premises, reimburse themselves and himself respectively, all such costs, charges, and expenses, as they or he may be put unto in the execution of the trusts hereby created. IN WITNESS &c.

27. GRANT OF ADDITIONAL ANNUITY BY INDORSEMENT.

Power to trustees to reimburse themselves all expenses.

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28. GRANT *by* APPOINTMENT *and* RELEASE *in Fee under the usual Limitation to prevent Dower,* TO THE USE *that the Grantee, his Executors, Administrators, and Assigns, may receive an* ANNUITY *for the Lives of Three Nominees, or for Ninety-nine Years, if Three Nominees should so long live; with Powers of* DISTRESS *and* ENTRY *by way of Use;* TRUSTS FOR SALE; DEFEASANCE *on Judgment and Power to* REPURCHASE.

28. GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

THIS INDENTURE, made &c. BETWEEN [*grantor*], of &c., of the first part; [*dower trustee*], of &c., of the second part; [*grantee*], of &c., of the third part; and [*trustee for sale, &c.*], of &c., of the fourth part. WHEREAS by indenture of lease and indenture of appointment and release (*or* indentures of lease and release), bearing date respectively on or about the —— and —— days of ——, 18—, the indenture of (appointment and) release being made between [*vendor*], of &c., of the first part; ([*vendor's dower trustee*], of &c., of the second part); the said [*grantor*], of the third

Parties.

Recital of lease and appointment, and release to uses to prevent dower;

28. GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

part; and the said [*trustee to prevent dower*], of the fourth part; the several messuages, tenements, lands, hereditaments, and premises hereinafter particularly mentioned and intended to be hereby appointed, granted, and released, with their appurtenances, were (appointed), conveyed or assured, and now stand limited *To the use* of such person or persons for such estate or estates, with, under, and subject to such powers, provisoes, conditions, and declarations, and for such intents and purposes, and in such manner in all respects as the said [*grantor*], by any deed or deeds, to be sealed and delivered by him, in the presence of, and to be attested by, two or more credible witnesses, or otherwise as in the same indenture of (appointment and) release is mentioned, should direct, limit, or appoint the same: *And* in default of such direction, limitation, or appointment, and in the mean time subject thereto, *To the use* of the said [*grantor*] and his assigns for his life; with remainder, *To the use* of the said [*dower trustee*] and his heirs, during the life of the said [*grantor*], *In trust* for the said [*grantor*] and his assigns, during his life; with remainder, *To the use* of the said [*grantor*], his heirs and assigns, for ever.

of contract for purchase of annuity for three lives;

AND WHEREAS the said [*grantee*] hath contracted and agreed with the said [*grantor*] for the purchase of an annuity of £——, to be paid to the said [*grantee*], his executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever, during (*a*) the lives of [*three nominees*], of &c., and the lives and life of the survivors and survivor of them: *And* upon the treaty for the sale of the said annuity, it was agreed that the same should be secured by the bond or obligation of the said [*grantor*], and a warrant of attorney for entering up a judgment thereon; and also by the covenant of the said [*grantor*], for payment of the same as hereinafter contained: *And also* that the same annuity should be further secured by conveying the said several messuages, tenements, lands, hereditaments, and premises, to the uses, upon the trusts, and to and for the intents and purposes hereinafter mentioned, expressed, and

to be secured by bond, warrant of attorney, covenant, and conveyance, upon trusts for sale, &c.;

FOR YEARS DETERMINABLE ON LIVES.

(*a*) "for and during the term of ninety-nine years, if [*three nominees*], of &c., any or either of them, should so long live; *And* upon the treaty," &c., *ut supra*.

[There is no advantage in this form of limitation. *Vide ante* p. 10.]

28. GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

declared of and concerning the same: *And also* that the said annuity might be repurchased upon the terms expressed in the agreement hereinafter inserted in that behalf: *Recite bond* (*b*) *and warrant of attorney, ut ante,* p. 208). NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— of lawful British money to the said [*grantor*] in hand well and truly paid by the said [*grantee*], at or before the sealing and delivery of these presents, the receipt whereof the said [*grantor*] doth hereby acknowledge and from the same doth acquit, release, and for ever discharge the said [*grantee*], his executors, administrators, and assigns; *He* the said [*grantor*], in pursuance of the power or authority given, limited, or reserved to him in or by the said indenture of (appointment and) release, and of every other power or authority in anywise enabling him in this behalf, *doth* by this deed sealed and delivered by him the said [*grantor*], in the presence of, and to be attested by, the two credible persons, whose names are intended to be hereupon indorsed as witnesses attesting the sealing and delivery of these presents by him the said [*grantor*], direct, limit, and appoint, That the several messuages, lands, hereditaments, and premises comprised in the said indenture of (appointment and) release, shall henceforth remain and be, *To the uses,* upon the trusts, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements hereinafter mentioned, expressed, and declared of and concerning the same. AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, and also in consideration of the sum of ten shillings, by the said [*trustee for sale, &c.*] to the said [*grantor*] and [*dower trustee*], paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he the said [*dower trustee*], by way of further assurance, at the request and by the direction of the said [*grantor*], and at the nomination and appointment of the said [*grantee*], by these presents, *doth* bargain, sell, and release; *And* the

to be repurchasable;

costs to be paid by grantee;

of bond and warrant of attorney.

Testatum.

Appointment.

To the uses, upon the trusts, &c. after mentioned.

Release by trustee to prevent dower and grantor.

(*b*) "for and during the term of ninety-nine years, if the said [*three nominees*], any or either of them, should so long live, *One* annuity," &c., *ut ante,* p. 186, *mutatis mutandis.*

FOR YEARS DETERMINABLE ON LIVES.

28. GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

said [*grantor*], by way of further assurance, at the nomination and appointment of the said [*grantee*], by these presents, (made in pursuance of an act of Parliament, passed in the 4th year of the reign of Queen Victoria, intituled, "An Act for rendering a release as effectual for the conveyance of freehold estates, as a lease and release by the same parties"), *doth* grant, bargain, sell, release, ratify, and confirm unto the said [*trustee for sale, &c.*], and to his heirs (*c*);

Reference to lease for a year.

Parcels.

ALL those several messuages, tenements, lands, and hereditaments, commonly called or known by the name of ——, and containing by estimation —— acres, be the same more or less: *And also* all other the hereditaments, if any, comprised in and conveyed by the above-recited indentures of lease and appointment and release (*or* indentures of lease and release), bearing date respectively on or about &c.; *All* which messuages, tenements, lands, hereditaments, and premises are situate, lying, and being in the parish of ——, in the county of ——.

General words for farms.

AND all [houses, outhouses, buildings, barns, stables, sheds, yards, gardens, orchards, hedges, ditches, mounds, fences, drains, ways, paths, passages, waters, watercourses, trees, woods, underwoods, and the ground and soil thereof, wastes, commons, common of pasture and turbary, lights, liberties, easements, profits, privileges, commodities, advantages, emoluments, hereditaments], rights, members, and appurtenances whatsoever, to the said several messuages, tenements, lands, hereditaments, and premises, or any of them, or any part or parcel thereof, belonging or in anywise appertaining or therewith now usually had, held, used, occupied, letten, possessed, or enjoyed, or accepted, reputed, deemed, taken, or known as part, parcel, or member thereof, or of any part thereof.

And the reversion, &c.

AND the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits of the same messuages and hereditaments, and every part and parcel thereof.

All the estate, &c.

AND all the estate, right, title, interest, use, trust, possession, inheritance, benefit, property, claim, and

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A conveyance to uses should be made to the releasee and his heirs, omitting assigns.

(*c*) When uses are to be declared on the seisin of a releasee or feoffee, the conveyance should be to him and his *heirs*, and not to him, his *heirs and assigns;* for as he is only a conduit-pipe, through whom the uses are to arise, his momentary seisin is not capable of being assigned; and therefore the word *assigns* is incorrect and useless. Sug. n. Gild. Uses, 185; Noy's Maxims, p. 305, 9th Ed.

demand whatsoever, both at law and in equity, of them the said [*grantor*] and [*trustee to prevent dower*], and each of them, of, in, to, or out of the said messuages, tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, and every or any part thereof respectively. AND ALSO all deeds, evidences, and writings, touching and concerning the said hereditaments and premises, and every or any part thereof, now in the custody or power of the said [*grantor*] and [*dower trustee*], or either of them, or which they or either of them can or may obtain or procure, without suit at law or in equity. TO HAVE AND TO HOLD the said several messuages, tenements, lands, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, and every part and parcel thereof, with their and every of their appurtenances, unto the said [*trustee for sale, &c.*], and his heirs; TO THE USE, intent, and purpose, that the said [*grantee*], his executors, administrators, and assigns, shall and may henceforth, for and during the (*d*) lives of them the said [*three nominees*], and the lives and life of the survivors and survivor of them, and up to the day of the decease of such survivor, have, receive, and take by and out of the rents, issues, and profits of the said hereditaments and premises, *One* annuity, yearly rent-charge, or sum of £—— of lawful British money, free and clear of and from all taxes, charges, and deductions whatsoever; *The said* annuity or rent-charge to be paid and payable by equal quarterly payments to him the said [*grantee*], his executors, administrators, and assigns, at or in the common dining-hall of Lincoln's Inn, in the county of Middlesex, on the —— day of ——, &c., in every year, the first payment to be made on the —— day of —— next, together with a proportional part of the same annuity or rent-charge, for the time which shall elapse between the last of the said days of payment preceding the day of the decease of the survivor of them the said [*nominees*], and the day of such survivor's decease; as in the condition to the above in part recited

28. GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

All deeds, &c.

Habendum to trustee to the uses, &c., after mentioned, viz.

To the intent that grantee may receive an annuity for the lives of three nominees;

payable quarterly,

with a proportional part to death of the survivor.

(*d*) "the term of ninety-nine years, if the said [*three nominees*], any or one of them, should so long live, have, receive," &c.

FOR YEARS DETERMINABLE ON LIVES.

28. GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

bond or obligation is mentioned. [AND (*e*) TO THIS FURTHER USE, intent, and purpose, that if any quarterly payment of the said annuity or rent-charge, or any part thereof, should be behind and unpaid by the space of fourteen days next over or after any of the said days of payment, then and in such case, and as often as it shall so happen, it shall be lawful to and for the said [*grantee*], his executors, administrators, and assigns, into and upon the said hereditaments and premises, or any part thereof, to enter and distrain for the same annuity or rent-charge, and all arrears thereof; and the distress and distresses then and there found, to take, lead, drive, carry away, and impound; and the same in pound to detain and keep until the said annuity or rent-charge, and all arrears thereof, and all costs, charges, and expenses whatsoever sustained or occasioned by or attending the making, taking, and keeping of such distress then and there found, shall be fully paid and satisfied: And in default of payment thereof in due time after such distress shall be made and taken, to appraise, sell, or otherwise to act therein according to due course of law, in the same manner in all respects as landlords are by act of Parliament authorized to do in respect to distresses for arrears of rent upon leases for years; to the intent that thereby and therewith the said [*grantee*], his executors, administrators, and assigns, shall and may be fully paid and satisfied the said annuity or rent-charge, and all arrears thereof, or so much thereof as shall be then remaining due and unpaid, and all costs, charges, and expenses whatsoever sustained or occasioned by the non-payment thereof.] AND TO THIS FURTHER USE, intent, and purpose, that if the said annuity or rent-charge, or any part thereof should be behind and unpaid by the space of twenty-eight days next over or after any of the said days or times appointed for the payment thereof as aforesaid, then and in such case, and as often as it shall so happen, although no formal demand thereof be made, it shall and may be lawful to and for the said [*grantee*], his executors, administrators, and assigns, into and upon the said hereditaments and premises, or any part thereof, in the name of the whole, to

Power of distress by way of use.

Power of entry by way of use.

Power of distress unnecessary, when a rent is created by way of use.

(*e*) As this deed is within the 27 Hen. 8, c. 10, s. 5, *ante*, p. 25, the express declaration of use, giving a power of distress, is not necessary, although it is usually made in similar instances.

28. GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

enter; and the same to have, hold, and enjoy, and the rents, issues, and profits thereof, and of every part thereof, to receive and take to and for his and their own use and benefit, until he or they shall be thereby, or therewith, or otherwise, fully paid and satisfied all arrears of the said annuity or rent-charge, and also so much of the said annuity or rent-charge as shall accrue and grow due during such time as the said [*grantee*], his executors, administrators, or assigns, shall continue in possession of the said hereditaments and premises, after such entries as aforesaid; together with all such losses, costs, charges, damages, and expenses whatsoever as shall be sustained or occasioned by reason or means of the non-payment thereof, or of any part thereof, at or on the days appointed for the payment thereof as aforesaid: and such possession, when taken, to be without impeachment of waste: AND subject to the said annuity or rent-charge, and the powers and remedies hereby given and limited for securing and enforcing the payment thereof; TO THE USE of the said [*trustee for sale, &c.*], his heirs and assigns for ever, UPON TRUST to permit and suffer the said [*grantor*], his heirs and assigns, to receive and take the rents, issues, and profits thereof to and for his and their own use and benefit, until some default shall happen to be made of and in payment of the said annuity or rent-charge, or some part thereof, at or on the days or times and in the manner limited and appointed for the payment thereof as aforesaid. AND UPON FURTHER TRUST, that in case the said annuity or rent-charge, or any part thereof, should happen to be behind or unpaid by the space of sixty days next over or after any of the said days or times of payment thereof, or whereon the same is hereinbefore limited and appointed, and ought to be paid as aforesaid; then and in such case, and whenever the same shall happen, it shall be lawful to and for the said [*trustee for sale, &c.*], his heirs or assigns, and he and they are hereby fully authorized and empowered to sell and absolutely to dispose of the said hereditaments and premises, either together or in parcels, and either by public sale or private contract, or partly by public sale, and partly by private contract, subject to the said annuity or rent-charge, and under and subject to such special or other conditions and stipulations, relative to title or otherwise, as he or they shall think proper, with liberty to buy in the said hereditaments and premises, or any part thereof, at any auction or

And subject to annuity to the use of trustee for sale.

Upon trust to permit grantor to receive rents until default.

And on default in paying annuity by sixty days to sell;

28. GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

auctions, and to resell the same at any future auction, or by private contract, without being answerable for any loss or expense arising therefrom; and also (if deemed expedient) to vary the terms of or rescind any contract for sale; *And* to execute all such deeds, conveyances, and assurances of the said hereditaments and premises to the purchaser or purchasers thereof as shall be requisite or necessary for the completion of such sale or sales; *And* to stand and be possessed of and interested in all and every the sums and sum of money to arise and be produced from such sale or sales, and of the rents, issues, and profits of the said hereditaments and premises, to arise and become payable after the same shall become saleable, until the sale or sales thereof shall be completed; UPON TRUST thereout, in the first place, to retain and reimburse to and for himself and themselves, all such costs, charges, and expenses as he or they shall or may sustain, expend, or be put unto, in or about the making and completing of such sale or sales, or otherwise in the execution of the trusts hereby reposed in him and them: *And* by and out of the surplus thereof to pay to the said [*grantee*], his executors, administrators, and assigns, so much of the said annuity or rent-charge as at the time of completing such sale or sales shall be in arrear and unpaid; and also all such sums of money, losses, costs, charges, damages, and expenses, if any, as the said [*grantee*], his executors, administrators, or assigns, or any of them, shall pay, sustain, expend, or be put unto, for or by reason or means of the non-payment of the said annuity or rent-charge, or any part thereof, at or on the days and times, and in the manner hereinbefore mentioned or appointed for payment thereof, or otherwise howsoever relating thereto. AND UPON FURTHER TRUST to place out and invest the residue of the money to arise by such sale or sales, and of the rents, profits, and produce of the said hereditaments and premises, until such sale or sales shall be completed, upon government security at interest, in the name or names of him the said [*trustee for sale, &c.*], his executors, administrators, or assigns; AND to stand possessed of and interested in the monies so to be placed out and invested; UPON TRUST, by and out of the dividends and yearly proceeds thereof, and if such yearly interest, dividends, and proceeds should be insufficient, then, in addition thereto, by calling in and disposing from time to time of a sufficient part of the principal money so to be in-

and to be possessed of money arising therefrom;

upon trust to retain expenses.

And as to the surplus.

Upon trust to pay arrears of annuity due, and all costs, &c.;

And to invest residue upon government security;

Upon trust, out of interest, or, if insufficient, out of principal, to pay annuity.

28. GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

vested, or the stocks, funds, or securities for the same, to pay unto the said [*grantee*], his executors, administrators, or assigns, the said annuity or rent-charge, as and when the same shall grow due and become payable, or so much thereof as shall from time to time be in arrear and unpaid: AND ALSO UPON TRUST, by and out of the money so to be placed out or invested, and the dividends, interest, and yearly proceeds thereof, to retain and reimburse to and for him the said [*trustee for sale, &c.*], his executors, administrators, and assigns, all such costs, charges, and expenses as he or they may sustain or be put unto in the execution of the trusts hereby reposed in him and them; *And* subject to the trusts hereinbefore declared, IN TRUST for the said [*grantor*], his executors, administrators, and assigns, to and for his and their own absolute use and benefit. PROVIDED ALWAYS, *and it is hereby declared and agreed*, that after the decease of the survivor of them the said [*three nominees*], and full payment of the said annuity or rent-charge, and of such proportional part thereof and of all costs, charges, damages, and expenses as aforesaid, the said hereditaments and premises, or so much thereof as shall not be disposed of under or in pursuance of the trusts hereinbefore declared or expressed, shall be IN TRUST for the said [*grantor*], his heirs and assigns for ever, and be conveyed as he or they shall direct or appoint. (*Insert proviso that sales shall be valid, without grantors joining in them, ut ante*, p. 212, *if thought necessary*). PROVIDED ALWAYS, that the receipt or receipts of the said [*trustee for sale, &c.*], his heirs and assigns, shall from time to time be a good and sufficient discharge, or good and sufficient discharges, to the purchaser or purchasers of the hereditaments and premises, so to be sold as aforesaid, or any part or parts thereof, and to his, her, or their respective heirs, executors, administrators, and assigns, for so much of the purchase-money as shall therein be acknowledged to be or to have been received; *And* that such purchaser or purchasers, his, her, or their heirs, executors, or administrators, shall not afterwards be answerable or accountable for any loss, misapplication, or non-application of such purchase-money so to be received, or any part thereof, nor be obliged to inquire into the reason of making such sale or sales. PROVIDED ALSO, that the said [*trustee for sale, &c.*], his heirs, executors, administrators, or assigns, shall not be charged or chargeable with or for any sum or

And to retain costs, &c.

And subject thereto; in trust for grantor, his executors, &c.

After decease of nominees, and payment of arrears, premises not disposed of to be in trust for grantor.

Receipts of trustee to be sufficient discharges to purchasers.

Trustee not to be accountable for involuntary loss.

28. GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

sums of money other than such as shall actually and respectively come to his and their hands by virtue of these presents; nor with or for any loss or damage which may happen in or about the execution of all or any of the trusts aforesaid, without his or their wilful default. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, will or shall pay unto the said [*grantee*], his executors, administrators, or assigns, during (*g*) the lives of the said [*three nominees*], and the lives and life of the survivors and survivor of them, the said annuity or yearly rent-charge of £——, and such proportional part thereof as aforesaid, free from taxes, and clear of all other deductions whatsoever, at the days and times, and in manner and form expressed, limited, and appointed for payment thereof, in and by the said bond or obligation. AND THE SAID [*dower trustee*] doth hereby, for himself, his heirs, executors, and administrators, covenant with the said [*trustee for sale, &c.*], his heirs and assigns, that he the said [*dower trustee*], hath made, done, executed, committed, or been privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the said hereditaments and premises, or any part thereof, are, is, can, shall, or may be conveyed, impeached, charged, or in anywise incumbered. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth covenant and agree with the said [*trustee for sale, &c.*], his heirs and assigns, *that* they the said [*grantor*] and [*dower trustee*], now have in themselves, or one of them hath in himself, good right, full power, and lawful and absolute authority by these presents to appoint, release, and convey, or otherwise assure the said hereditaments and premises, and every of them, and every part and parcel thereof, with their and every of their appurtenances, to the uses, upon the trusts, and to and for the intents and purposes, and in manner and form aforesaid, according to the true intent and meaning of these presents: AND that all and singular the said hereditaments and pre-

Covenant to pay annuity.

Covenant by dower trustee that he has not incumbered.

Covenant by grantor that he and trustee have good right to convey in fee;

that premises

FOR YEARS, DETERMINABLE ON LIVES.

(*g*) "for and during the term of ninety-nine years, if the said [*three nominees*], any, or one of them, should so long live, the said annuity, &c., *ut supra*.

mises, shall and may, from time to time, and at all times hereafter, remain, and be to, upon, and for the same uses, trusts, intents, and purposes; AND shall and may be accordingly peaceably had, held, and enjoyed, without any lawful let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever, of or by him the said [*grantor*] or his heirs, or by any other person or persons whomsoever. AND free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise, by him the said [*grantor*], his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all, and all manner of former and other titles, charges, and incumbrances whatsoever: AND MOREOVER, that he the said [*grantor*], and his heirs, and all and every other person or persons whosoever, now or hereafter having, or lawfully or equitably claiming any estate, right, title, trust, or interest in, to, or out of the said hereditaments and premises, or any part thereof, will and shall from time to time, and at all times hereafter, upon every reasonable request of the said [*trustee for sale, &c.*], his heirs or assigns; but at the costs of the said [*grantor*], his heirs or assigns; make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful acts, deeds, conveyances, and assurances in the law whatsoever, for further, better, more perfectly, absolutely, or satisfactorily directing, limiting and appointing, conveying, assuring, and confirming the said hereditaments and premises, and every of them, and every part and parcel thereof, with their and every of their appurtenances, to the uses, upon the trusts, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements, hereinbefore mentioned, expressed, and declared of and concerning the same, or such of them as shall then remain to be performed, and capable of taking effect; As by the said [*trustee for sale, &c.*], his heirs or assigns, or his or their counsel, shall or may be advised, devised, or required: AND FURTHER, that he the said [*grantor*], his heirs and assigns, will and shall join and concur in the making of any sale or sales to be made, or proposed to be made by the said [*trustee for sale, &c.*], his heirs or assigns, under or by virtue of the trusts hereinbefore mentioned; and in executing the several conveyances and assurances of the said hereditaments and premises to the purchaser or purchasers thereof; and enter

28. GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

shall remain to uses, &c., hereby declared;

for quiet enjoyment.

free from incumbrances;

for further assurance;

and that grantor will join in conveyances to purchasers,

28. GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

into all usual covenants with such purchaser or purchasers, his, her, or their heirs, executors, administrators, and assigns, for the estate, title, possession, and further assurance of the said hereditaments and premises, or such of them as shall be so sold, or do any other act or acts for confirming such sale or sales; *Nevertheless it is hereby agreed and declared,* that the joining of the said [*grantor*], his heirs or assigns, in any such sale or sales, conveyance or conveyances, shall not in anywise be deemed or considered as essential or necessary to perfect the title of the purchaser or purchasers of the said hereditaments and premises, or any part thereof; the same being intended only for the further satisfaction of such purchaser or purchasers (*h*). (*Add defeazance on the judgment, ut ante,* p. 216 (*i*); *and power to repurchase, ut ante,* p. 218; *substituting in this instance, at the bottom of* p. 218); AND then and in such case the said [*trustee for sale, &c.*], his heirs or assigns, will or shall, at the request, costs, and charges of the said [*grantor*], his heirs or assigns, reconvey or otherwise assure the said hereditaments and premises, or so much thereof as shall not have been sold and disposed of under the trusts hereinbefore declared, unto and to the use of the said [*grantor*], his heirs and assigns; or as he or they shall direct or appoint; *And* then also and in that case, if the same hereditaments and premises, or any part thereof, should have been sold and disposed of, and the produce thereof invested upon government securities at interest, the said [*trustee for sale, &c.*], his executors, administrators, or assigns, will or shall transfer such government securities as may then remain unapplied and undisposed of for the purposes aforesaid, unto the said [*grantor*], his executors, administrators, or assigns; anything herein contained to the contrary thereof in anywise notwithstanding. IN WITNESS &c. (*k*).

but such concurrence not to be essential.

On repurchasing annuity, trustee to reconvey premises not sold; and any sold, to transfer securities.

ATTENDANT TERM.

(*h*) If there be an attendant term, according to the present practice, it should be assigned by a separate deed.

FOR YEARS, DETERMINABLE ON LIVES.

(*i*) "for and during the term of ninety-nine years, if the said [*three nominees*], any or one of them, should so long live, at the several days and times," &c., *ut ante,* p. 217; *varying it as the circumstances of the case require.*

(*k*) [There will be no lease for a year, and the stamp appropriated to such an instrument must be affixed to the present deed in addition to its own stamp. Stat. 4 Vict. c. 21.]

29. GRANT *of an* ANNUITY *by a Widow for her Life, or for Ninety-nine Years, determinable on her Death, charged on a Moiety of a Freehold Estate, by* APPOINTMENT, *under a Power in her Marriage Settlement; Powers of* DISTRESS *and* ENTRY; APPOINTMENT *and* DEMISE *for Ninety-nine Years, if the Grantor should so long live, and* APPOINTMENT *and* ASSIGNMENT *of Dividends of Stock for the Life of the Grantor, to a Trustee, upon Trusts for securing the Annuity; Power to* REPURCHASE *at any Time after the Expiration of Two Years;* DEFEAZANCE *on Judgment; Covenant as to* INSURANCE; *and* COVENANT *by the Trustee to produce the Settlement and permit Copies to be taken.*

29. GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

THIS INDENTURE, made &c., BETWEEN [*grantor*], of &c. (widow and relict of [*husband*], late of &c., deceased), of the first part; [*grantee*], of &c., of the second part; and [*trustee*], of &c., of the third part. WHEREAS [*testator*], late of &c., deceased (father of the said [*grantor*]), by his last will [executed and attested so as to pass freehold property, and] bearing date on or about &c., gave and devised *all* his freehold messuages, tenements, lands, and hereditaments, unto his wife [*widow*] (since deceased), for and during the term of her natural life: *And* after the decease of his said wife, he gave and devised *all* his said freehold messuages, tenements, lands, and hereditaments, unto his two children [*son*] and the said [*grantee*] then [*maiden name*], their heirs and assigns, for ever, as tenants in common: *And* thereby directed, that in case of the decease of either of them, his said son and daughter, under the age of twenty-one years, and without leaving lawful issue, then the moiety or share of her or him so dying should go unto the survivor of them, and his or her heirs and assigns for ever. AND the said testator thereby gave and bequeathed unto his said wife, during her natural life, the interest and produce of £——, three per centum consolidated Bank Annuities, and of £——, three per centum reduced Bank Annuities,

Parties.

Recital of a devise of freehold lands to wife for life,

with remainder to the grantor and her brother in fee in common;

with cross remainders.

Recital of bequest of interest of stock to wife for life;

29. GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

(therein called by mistake four per centum reduced Bank Annuities), then standing in his the testator's name: *And* after the decease of his said wife, he gave and bequeathed the said principal sums of £——, three per centum consolidated Bank Annuities, and £——, three per centum reduced Bank Annuities, unto his said son and daughter, [*son*] and [*grantor*], to be equally divided between them, share and share alike; *subject* nevertheless to his the testator's said son [*son*]; paying the said [*grantor*], immediately after the death of the said [*widow*], the sum of £——, in regard that he the said testator had already preferred and advanced to his said son monies to double that amount: *And* in case of the decease of either of them, the said [*son*] and [*grantor*], before he or she should attain the age of twenty-one years, and without leaving lawful issue, then the said testator directed, that the moiety of her or him so dying, of and in the said Bank Annuities, should go and be to the only use and behoof of the survivor of them, his or her executors, administrators, or assigns. *And* the said testator appointed his said wife, and [*executor*], of &c., and [*other executor*] the younger, of &c., executrix and executors of his said will. AND WHEREAS the said testator departed this life in or about the month of ——, without having revoked or altered his said will; which was duly proved by his said executrix and executors, on or about the —— day of ——, in the prerogative court of the Archbishop of Canterbury. AND WHEREAS by indenture of settlement, bearing date &c., and made between the said [*husband*] of the first part, the said [*grantor*] (by her then name and description of [*maiden name*], of &c.) of the second part, and [*trustees*], of &c., of the third part, being the settlement made previously to, and in contemplation of, the marriage then intended, and which shortly afterwards was duly solemnized, between the said [*husband*] and the said [*grantor*]): *It was witnessed*, that she the said [*grantor*] did grant, bargain, sell, alien, and confirm, unto the said [*trustees*], and to their heirs and assigns, *All that* moiety or half part and share of her the said [*grantor*], of and in *All those* three freehold messuages, tenements, lands, and hereditaments, situate, &c., *And also All* other the freehold messuages, tenements, lands, and hereditaments whatsoever, of her the said [*grantor*], in —— aforesaid, or elsewhere in the said county of ——, which she the said [*grantor*], or any person or per-

and after her decease, the principal to grantor and her brother in common:

subject to brother paying grantor a sum, which testator had advanced to him;

with cross limitations.

Appointment of executors;

death of testator.

Probate.

Recital of settlement on the marriage of grantor.

Recital of grant of moiety of remainder in fee.

29. GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

sons in trust for her, or for her use, was or were seised or possessed of, interested in, or entitled unto, in possession, reversion, remainder, or expectancy, under or in virtue of the said last will of her said late father, or otherwise, *Subject* to the said life estate and interest therein of the said [*widow*]: *To hold* the same, unto the said [*trustees*], their heirs and assigns: *To the use* of the said [*grantor*], her heirs and assigns, until the solemnization of the said then intended marriage; and from and upon, and immediately after the solemnization thereof, *To the use* (*a*) of such person and persons, and upon and for such trusts, and to and for such intents and purposes, and for such estate and estates, and under and subject to such conditions, restrictions, limitations, powers, provisoes, and agreements, and with or without power of revocation, and in such sort and manner and form as she the said [*grantor*], by any deed or deeds, to be by her sealed and delivered in the presence of two or more credible and subscribing witnesses, or by her last will should from time to time give, grant, devise, direct, limit, or appoint: *And* in the meantime, and subject to any such gift, grant, devise, direction, limitation, or appointment, *To the use* of the said [*trustees*], their heirs and assigns, during the life of the said [*grantor*], *In trust* for, and for the sole and separate use and benefit of, her the said [*grantor*] and her assigns: *And* after the decease of the said [*grantor*], then *To the use* of the said [*husband*], during his life: *And* after the decease of the said [*husband*], to such other uses and upon such other trusts as in the said indenture of settlement are mentioned. AND it was by the said indenture of settlement *further witnessed*, that the said [*grantor*] *did* sell, assign, transfer, and set over, unto the said [*trustees*], their executors, administrators, and assigns, *All that* the said moiety or half part and share of her the said [*grantor*], of or in and to the said several stocks or principal sums of £——, three per centum consolidated Bank Annuities, and £——, three per centum reduced Bank Annuities, then late the property of the said testator [*testator*]; *And* the said £——, principal money, so given and bequeathed as aforesaid, to her the said [*grantor*], upon, or after the

to trustees,

to the use of grantor until intended marriage;

After the marriage, to such uses as grantor should appoint;

in default of appointment, to the use of trustees during grantor's life, in trust for her separate use:

remainder to the use of husband for life; with remainder over.

Recital of assignment to trustees,

of moiety of reversionary interest in stocks,

and a principal sum,

(*a*) The charge made by this deed on the real estate takes its legal effect from the above power of appointment. The subsequent interest of the grantor is a trust not executed by the Statute of Uses.

29. GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

decease of the said [*widow*] (*b*); *And* all dividends and interest, which should or might at any time or times after the decease of the said [*widow*] arise and become due and payable, for, or from and upon the same stocks or principal sums of money, and every or any part or parcel of the same respectively: *To have*, hold, receive, perceive, and take the same unto the said [*trustees*], their executors, administrators, and assigns; *In trust* to pay and assign, or transfer and dispose of the same, and every or any part thereof respectively, to such person or persons, and in such shares and proportions, and subject to such directions and limitations, and with or without power of revocation, and in such manner and form as she the said [*grantor*], by any deed or deeds, to be by her sealed and delivered in the presence of two or more credible and subscribing witnesses, or by her last will, should from time to time give, grant, bequeath, declare, limit, or appoint; *And* in the meantime, and subject to such gift, grant, bequest, declaration, limitation, or appointment, *In trust* for, and for the sole and separate use and benefit of the said [*grantor*], during her life: *And* after the decease of the said [*grantor*], *In trust* for the said [*husband*], during his life: *And* after his decease, then upon such other trusts as in the now reciting indenture of settlement are mentioned. AND WHEREAS the said [*widow*] and the said [*husband*], and also the said [*trustees*], have since departed this life; AND WHEREAS there being no power in the said indenture of settlement for the appointment of new trustees in their place, a suit hath been instituted by the said [*grantor*] in the High Court of Chancery, for the purpose of having trustees appointed of the aforesaid settled property by the said Court, in the room of the said [*trustees*]: *And* the sums of £——, three per centum consolidated Bank Annuities, and £——, three per centum reduced Bank Annuities, (being one equal half part of the hereinbefore mentioned sums of £——, three per centum consolidated Bank Annuities, and £——, three per centum reduced Bank Annuities), have, under the direction of the said Court of Chancery, been transferred into the name of the Accountant-General of the same Court. AND WHEREAS no appointment hath hitherto been made by the said

and all dividends thereon,

in trust for such persons, &c., as grantor should appoint:

in default of appointment.

in trust for the separate use of grantor during her life;

after her decease,

in trust for husband for life:

and after his decease, upon other trusts.

Recital of death of testator's widow, and of grantor's husband;

of death of trustees;

and there being no power for appointing new trustees, that a suit has been instituted for that purpose; and that the settled funds were standing in the name of the Accountant-General;

that grantor had made no appointment;

(*b*) As to assignments of reversionary *choses en action* by married women, *vide infra*, title SETTLEMENTS.

29. GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

[*grantor*], of or concerning her aforesaid moiety of and in the hereditaments comprised in the said indenture of settlement, or any part thereof, or the stocks, funds, and monies by the same indenture of settlement assigned and settled as aforesaid, or any part thereof respectively, or of or concerning the dividends, interest, or annual proceeds thereof, or of any part of such dividends, interest, or annual proceeds. AND WHEREAS the said [*grantee*] hath contracted with the said [*grantor*], for the absolute purchase of an annuity or yearly rent-charge of £——, for and during (*c*) the life of her the said [*grantor*], at the price of £——; *And* it was upon the treaty for such purchase agreed, that the said [*grantor*] should secure such annuity or yearly rent-charge, upon the said moiety or equal half part of and in the hereditaments comprised in the said indenture of settlement, and upon the dividends of the said sums of £——, three per centum consolidated Bank Annuities, and £——, three per centum reduced Bank Annuities, comprised in the same indenture; *And* the said [*grantor*] also agreed to execute a warrant of attorney for confessing a judgment against her the said [*grantor*], as a collateral security for the said annuity; *And* accordingly, by a deed-poll under the hand and seal of her the said [*grantor*], bearing even date with these presents, she the said [*grantor*] hath duly empowered certain attornies, in the said deed-poll named, forthwith to confess a judgment against her the said [*grantor*], in her Majesty's Court of Common Pleas, at Westminster, in an action of debt, at the suit of the said [*grantee*], for the sum of [*double the purchase-money*] besides costs of suit. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the said sum of £—— of lawful British money, to the said [*grantor*] paid by the said [*grantee*], upon or immediately before the sealing and delivery of these presents, the receipt whereof the said [*grantor*] doth hereby acknowledge; and from the same doth acquit, release, and discharge the said [*grantee*, his heirs, executors, administrators, and assigns, and every of them, for ever, by these presents: *And* by virtue, and in

of contract for purchase,

to be secured on settled moiety of lands,

and upon dividends of stocks,

and by a warrant of attorney.

Recital of warrant of attorney.

Testatum.

(*c*) "for and during the term of ninety-nine years, if the said [*grantor*] should so long live, at the price, &c.," *ut supra*. (*Vide ante*, p. 242, n.)

FOR YEARS, DETERMINABLE ON DEATH.

29. GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

Appointment,

exercise of the power or authority to her for this purpose reserved or given by the said indenture of settlement, and of all other powers and authorities whatsoever her the said [*grantor*] enabling in this behalf, *She* the said [*grantor*] by this present deed or writing, sealed and delivered by her the said [*grantor*], in the presence of, and attested by the two credible persons, whose names are hereunto subscribed as witnesses, attesting her sealing and delivery of these presents, *doth* appoint; *And* the said [*grantor*], in respect of her aforesaid life-estate in the moiety and other hereditaments hereinafter mentioned, by these presents *doth* give, grant, and confirm, unto the said [*grantee*], his executors, administrators, and assigns, henceforth for and during (*d*) the life of her the said [*grantor*], ONE annuity or yearly rent-charge of

of an annuity or rent-charge for grantor's life, to be charged upon a moiety of freehold premises.

£—— of lawful British money, free and clear of and from all taxes, charges, or deductions whatsoever; to be issuing and payable out of and from, and to be charged and chargeable upon, *All that* the said moiety or equal half part of and in *All those* hereditaments and premises in the said indenture of settlement described and the appurtenances thereto: To

Habendum of annuity.

HAVE, hold, receive, perceive, and take the said annuity or yearly rent-charge of £——, unto and by the said [*grantee*], his executors, administrators, and assigns, henceforth for and during (*e*) the life of the said [*grantor*], to be paid and payable to him the said [*grantee*], his executors,

To be payable quarterly,

administrators, and assigns, by four equal quarterly payments, on the —— day of ——, &c., in every year; the first payment to be made on the —— day of —— next, without

with proportional part to grantor's death.

any deduction whatsoever; *And* if the said [*grantor*] should happen to die on any other day than one of the said quarterly days of payment, then the said [*grantor*] *doth* hereby appoint, grant, and agree, that a proportional part of the current quarterly payment of the said annuity or rent-charge shall be paid to the said [*grantee*], his executors, administrators, or assigns, for the interval which shall have elapsed from the last preceding quarterly day of payment, up to (if

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FOR YEARS, DETERMINABLE ON DEATH.

(*d*) "for and during the term of ninety-nine years, if the said [*grantor*] should so long live, ONE annuity," &c., *ut supra.*

FOR YEARS, DETERMINABLE ON DEATH.

(*e*) "for and during the term of ninety-nine years, if the said [*grantor*] should so long live, to be paid," &c., *ut supra.*

any) and inclusive of, the day of such decease of her the said [*grantor*]. PROVIDED ALWAYS, and the said [*grantor*] doth also appoint, grant, agree, and declare, that if the said annuity or yearly rent-charge, or any part thereof, should at any time or times be in arrear or unpaid, for the space of twenty-one days next after any of the days or times hereinbefore appointed for payment thereof, then and in every such case, it shall be lawful for the said [*grantee*], his executors, administrators, or assigns, to enter and distrain, into and upon the hereditaments hereby charged (*g*) with the said annuity or yearly rent-charge of £—— : and into and upon every or any part or parcel thereof; and to take, lead, drive, carry away, and impound, and in pound to detain and keep the distress or distresses which shall be then and there found; and in due time after the taking of such distresses, to sell and dispose of the same, or otherwise to act therein according to law, in the same manner, and as effectually in all respects, as in the cases of distresses taken by landlords for rent reserved upon leases for years: to the end and intent, that by all or any of the ways and means hereinbefore-mentioned, the said annuity or rent-charge, or any part thereof, so in arrear or unpaid as aforesaid, and all costs, charges, and expenses which shall be occasioned or incurred, by reason of such non-payment, may be fully paid, satisfied, and discharged: *And further*, that if the said annuity or yearly rent-charge, or any part thereof, should be in arrear or unpaid for the space of forty days next after any of the days or times hereinbefore appointed for payment thereof, then and in every such case, (although there should not have been any demand made thereof, or of the arrears thereof), it shall be lawful for the said [*grantee*], his executors, administrators, or assigns, to enter into and upon, and to hold, possess, and enjoy the hereditaments hereby charged with the payment of the said annuity or rent-charge, and every or any part or parcel thereof; and to receive and take the rents, issues, and profits thereof respectively, to and for his and their own use and benefit, until he or they shall therewith and thereby, or otherwise, be fully paid and satisfied the said annuity or rent-charge, and the arrears thereof, due at the time of such entry as last aforesaid, and afterwards to become due during

29. GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

Power of distress on a moiety of freehold lands by appointment;

and power of entry,

(*g*) As to a power of distress, granted by a person having an interest in lands with others, *vide ante*, p. 34, *et seq.*

29. GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

the time of his or their being in possession of the aforesaid premises; together with all costs, charges, and expenses which he or they shall sustain or incur, by reason of any such non-payment as last aforesaid; and such possession taken to be without impeachment of waste. AND THIS INDENTURE ALSO WITNESSETH, that for more effectually securing the due payment of the said annuity or rent-charge, and for the considerations aforesaid, and in consideration of the sum of ten shillings of lawful British money, to the said [*grantor*] paid by the said [*trustee*], upon or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged; and by virtue, and in exercise of the powers and authorities aforesaid, *She* the said [*grantor*], at the request and by the direction of the said [*grantee*], by these presents, *Doth* appoint; *And,* in respect of such her life-estate as aforesaid, *doth* grant, bargain, sell, and demise, unto the said [*trustee*], his executors, administrators, and assigns, ALL THAT the said moiety or equal half part of or to which the said [*grantor*] is so seised or entitled, and over which she hath such power of appointment as hereinbefore mentioned, of and in the said messuages, tenements, lands, and hereditaments, with their appurtenances. TO HAVE AND TO HOLD the said hereditaments and premises, unto the said [*trustee*], his executors, administrators, and assigns, henceforth during the term of ninety-nine years, to be computed from the day next before the day of the date of these presents, and to be fully complete and ended, if the said [*grantor*] should so long live, without impeachment of or for any manner of waste, IN TRUST to permit and suffer the said [*grantor*], her heirs, appointees, or assigns, to receive and take the rents, issues, and profits of the said hereditaments and premises, so long as the said annuity or rent-charge shall be paid, at the times and in the manner hereinbefore appointed for payment thereof: *And* IN TRUST, that if the said annuity or rent-charge, or any part thereof, should at any time be in arrear or unpaid for the space of sixty days next after any of the days or times hereinbefore appointed for payment thereof, then and so often as the same shall happen, the said [*trustee*], his executors, administrators, or assigns, shall, by and with, and out of the rents, issues, and profits of the said hereditaments and premises, or of any part thereof, or by demising, leasing, mortgaging, or selling the same, or any part thereof, for all

Further testatum.

Appointment and demise,

of moiety to trustee.

Habendum for ninety-nine years, if the grantor should so long live;

in trust to permit grantor to receive rents so long as annuity is paid,

and on default for sixty days, out of rents, or by mortgage or sale, to raise money to pay arrears, &c.,

29. GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

or any part of the said term of ninety-nine years, or by such other ways or means as to him the said [*trustee*], his executors, administrators, or assigns, shall seem expedient, levy and raise so much money as shall be sufficient, from time to time, to pay and satisfy the said annuity or rent-charge, or so much thereof as shall for the time being happen to be in arrear or unpaid, and all costs, charges, damages, and expenses which the said [*grantee*], his executors, administrators, or assigns, shall sustain or incur by reason or in consequence of such non-payment, and which the said [*trustee*], his executors, administrators, or assigns, shall sustain or incur in the execution of the trusts hereby reposed in him or them, or otherwise in relation thereto; *And* shall apply the monies so to be raised in answering the purposes for which the same monies are hereby made raisable, *And* IN TRUST to permit and suffer the said [*grantor*], her heirs, appointees, or assigns, to receive and take the residue and surplus of the said rents, issues, and profits, to and for her or their own use and benefit. PROVIDED ALWAYS, that when and so soon as all and singular the trusts and purposes hereinbefore expressed concerning the said term of ninety-nine years, shall be fully performed or otherwise satisfied, then and thenceforth the same term shall cease and determine, anything hereinbefore contained to the contrary notwithstanding. AND THIS INDENTURE ALSO WITNESSETH, that for the considerations aforesaid, and by virtue and in exercise of the powers and authorities aforesaid, *She* the said [*grantor*], at the request and by the direction of the said [*grantee*], by these presents *doth* appoint; *And* in respect of her aforesaid life-interest in the hereinbefore mentioned dividends, interest, or annual proceeds, *doth* bargain, sell, assign, transfer, and set over, unto the said [*trustee*], his executors, administrators, and assigns, ALL the dividends, interest, or annual proceeds henceforth, during the life of her the said [*grantor*], to accrue due, for the said several sums of £——, three per centum consolidated Bank Annuities, £——, three per centum reduced Bank Annuities, (being one equal half part of the aforesaid sums of £——, three per centum consolidated Bank Annuities, and £——, three per centum reduced Bank Annuities), and the dividends, interest, or annual proceeds of all other the stocks, or funds, comprised in the aforesaid indenture of settlement; and of the stocks,

and in trust to permit grantor to receive residue of rents.

Proviso for cesser of term.

Further testatum.

Appointment and assignment to trustee,

of dividends of stock for the life of grantor.

29. GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

funds, or securities to be purchased by virtue of the power of varying securities in the said indenture contained, and henceforth to accrue due, during the life of the said [*grantor*] (*h*). AND all the right, title, trust, interest, property, benefit, claim, and demand whatsoever, at law and in equity, of her the said [*grantor*], of, in, to, or out of the same dividends, interest, or annual proceeds, or any part thereof.

All the right, &c.

Power of attorney to receive and recover dividends.

AND the said [*grantor*] doth hereby irrevocably nominate, constitute, and appoint the said [*trustee*], his executors, administrators, and assigns, to be the true and lawful attorney and attornies of her the said [*grantor*], for her and in her name, but upon and for the trusts and purposes hereinbefore mentioned, to ask, demand, sue for, recover, and receive the said dividends, interest, or annual proceeds, or any part thereof: *And* upon payment thereof, or of any part thereof, from time to time, to give, sign, and execute, in such name or names as aforesaid, proper and effectual receipts, acquittances, and discharges for the same; *And* upon non-payment of the same dividends, interest, or annual proceeds, or any part thereof, for her the said [*grantor*], and in her name, to commence, carry on, and prosecute any action or actions, suit or suits, or any other proceedings, in any Court of law or equity, or other Court of judicature whatsoever, for the purpose of recovering and compelling payment of the same dividends, interest, or annual proceeds, or any part thereof; *And generally* for her the said [*grantor*], and in her name, or in the name or names of the said attorney or attornies, to do, perform, and execute all such acts, matters, and things, as the said attorney or attornies shall think requisite or proper for the purposes aforesaid: *She* the said [*grantor*] hereby agreeing to ratify and confirm all such acts and things as the said attorney or attornies shall lawfully do, or cause to be done, in or about the premises, by virtue hereof.

Habendum of the dividends.

Upon trusts afterwards declared; viz.

In trust to permit grantor to receive dividends until default in paying annuity;

TO HAVE, hold, receive, and take the said dividends, interest, or annual proceeds and premises, unto and by the said [*trustee*], his executors, administrators, and assigns, henceforth, for and during the life of the said [*grantor*], IN TRUST that he the said [*trustee*], his executors, administrators, and assigns, shall permit and suffer the said [*grantor*], her appointees or assigns, to receive the said divi-

(*h*) [*Vide post*, Vol. 5, p. 171.]

29. GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

dends, interest, or annual proceeds, until default shall have been made in payment of the said annuity or rent-charge of £——, or any part thereof, for the space of twenty-one days next after any of the days or times hereinbefore appointed for payment thereof as aforesaid: *And* from and immediately after such default shall have been made as last aforesaid, then IN TRUST that he the said [*trustee*], his executors, administrators, or assigns, shall, from time to time, receive and take the said dividends, interest, or annual proceeds, during the life of the said [*grantor*], or, until the said annuity or rent-charge shall be redeemed or repurchased, conformably to the proviso hereinafter in that behalf contained: *And* shall, out of the said dividends, interest, or annual proceeds, from time to time, pay to the said [*grantee*], his executors, administrators, or assigns, the said annuity or rent-charge, or so much thereof as shall be for the time being in arrear; and all such costs, charges, and expenses, as shall be sustained or incurred by the said [*grantee*], his executors, administrators, or assigns, in consequence of the non-payment of the said annuity or rent-charge, and as shall be sustained or incurred by the said [*trustee*], his executors, administrators, or assigns, in the execution of the trusts herein expressed, or otherwise in relation thereto; *And* shall permit and suffer the residue and overplus (if any) of the said dividends, interest, or annual proceeds, after answering and satisfying thereout the trusts and purposes hereinbefore mentioned, to be from time to time received and taken by the said [*grantor*], her appointees or assigns, for her or their absolute benefit. AND THE SAID [*grantor*] doth hereby, for herself, her heirs, executors, and administrators, covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that she the said [*grantor*], her heirs, executors, or administrators, or some or one of them, will or shall, from time to time (*i*), during the life of her the said [*grantor*], or until such redemption or repurchase of the said annuity as hereinafter mentioned, pay unto the said [*grantee*], his executors, administrators, or assigns, the said annuity or rent-charge of £——, and eventually such proportional part thereof as aforesaid, at the times hereinbefore

and after default,

in trust to receive dividends during grantor's life, or until annuity is repurchased;

and to pay annuity and costs;

and to permit residue to be received by grantor.

Covenant to pay annuity for the grantor's life.

(*i*) "during the said term of ninety-nine years, if the said [*grantor*] should so long live, or until," &c. *ut supra*.

FOR YEARS DETERMINABLE ON DEATH.

29. GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

mentioned and appointed for payment thereof, in manner aforesaid, and according to the true intent and meaning of these presents. AND THE SAID [*grantor*] doth, for herself, her heirs, executors, and administrators, covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that she the said [*grantor*] hath full power and authority to appoint, grant, and confirm unto the said [*grantee*], his executors, administrators, and assigns, the said annuity or yearly rent-charge of £——, in manner aforesaid; and to charge the same upon such moiety of her the said [*grantor*] as aforesaid, of and in the hereditaments hereinbefore described, with their appurtenances; and to appoint, grant, bargain, sell and demise the same hereditaments unto the said [*trustee*], his executors, administrators, and assigns, for the said term of ninety-nine years, determinable as aforesaid, upon the trusts hereinbefore expressed; and to appoint, bargain, sell, and assign the said dividends, interest, or annual proceeds (*k*) of the aforesaid sums of £——, three per centum consolidated Bank Annuities, and £——, three per centum reduced Bank Annuities, and of such other stocks or funds as aforesaid, unto the said [*trustee*], his executors, administrators, and assigns, upon the trusts hereinbefore expressed, in manner aforesaid, and according to the true intent and meaning of these presents: AND [that (*l*)] free and clear, and freely and clearly acquit-

Covenant for title;

for acquittal and indemnity;

(*k*) [J. Notice of this charge should be given to the trustees in whose names the stock is standing. *Vide post*, Vol. 5, p. 458.J.]

The word *that* in the covenant for acquittal indemnity generally omitted.

(*l*) This pronoun is used emphatically. You shall enjoy the estate, and *that* free from incumbrances. Dr. Johnson, in his Dictionary, has extracted a passage from the whole Duty of Man, in which the word is used in the same sense:—"We must direct our prayers to the right ends; and *that* either in respect of the prayer itself, or the things we pray for." It has, however, been thought that the word has crept into the common form of covenants through inadvertence, Sug. Ven. 489, 5th Ed., and it is now generally omitted. The ancient, and, it seems, the correct form of this covenant was,—"And *that* the said messuages, &c. now are, and henceforth for ever hereafter shall remain, continue, and be unto the said A. B., his heirs and assigns, free and clear," &c. See 1 Bridgman's Conveyances, 236, &c. 5th Ed. Conveyancer's Light, 419, &c. 5th Ed. And in other instances the form was the same as that now generally used; "And free and clear," &c. See 1 Bridgman, 230, 238, 258, &c. The first books of Precedents in which the word *that* is used in the same manner as in the above precedent, are

29. GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

ted, exonerated, and discharged, or otherwise, by her the said [*grantor*], her heirs, executors, or administrators, well and sufficiently saved, defended, and kept harmless, and indemnified of, from, and against all and all manner of former and other rights, titles, charges, and incumbrances whatsoever: AND MOREOVER, that she the said [*grantor*], her executors and administrators, and all and every persons and person now or hereinafter having, or lawfully claiming, any estate, right, title, trust, inheritance, or interest whatsoever, at law or in equity, of, in, to, or out of the said moiety of her the said [*grantor*], of and in the hereinbefore mentioned hereditaments, or any part thereof, or of, in, to, or out of the dividends, interest, or annual proceeds of the aforesaid sums of £——, three per centum consolidated Bank Annuities, and £——, three per centum reduced Bank Annuities, or of such other stocks or funds as hereinbefore mentioned; or any part of such dividends, interest, or annual proceeds, shall and will, from time to time, and at all times hereafter during the continuance of this security, upon every reasonable request of the said [*grantee*], his executors, administrators, or assigns, but at the costs and charges of the said [*grantor*], her heirs, executors, administrators, or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every or any such further and other lawful acts, deeds, things, appointments, grants, demises, assignments, instruments, and assurances in the law whatsoever, for further, better, more perfectly, absolutely, and effectually charging and securing the said annuity or rent-charge upon the said hereditaments, dividends, interest, or annual proceeds, in manner aforesaid, and according to the true intent and meaning of these presents; *As* by him the said [*grantee*], his executors, administrators, or assigns, or the counsel learned in the law of him, them, or any of them, shall or may be lawfully advised, devised, or required, and be tendered to be made, done, or executed. PROVIDED ALWAYS, that if at any time after the expiration of two years from the date of these presents, the said [*grantor*], her appointees or assigns, should be desirous of redeeming or repurchasing the said annuity or rent-charge; and of such desire, should give six

for further assurance.

Power to repurchase at any time after two years.

Horsman's Conveyancing, and Lilly's Conveyancer: see 2 Horsm. 267, &c. Ed. 1744. Lilly, 501, &c. 3rd Ed.

29. GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

calendar months' notice in writing to the said [*grantee*], his executors, administrators, or assigns, to be left at his or their most usual place of residence: or in lieu of such notice, should pay to the said [*grantee*], one half-year's payment in advance of the said annuity or rent-charge, then and in such case, from and immediately after the expiration of the said six calendar months for which such notice shall be given, or upon making such half-yearly payment in advance as aforesaid, and upon payment by her the said [*grantor*], her appointees or assigns, to the said [*grantee*], his executors, administrators, or assigns, of all arrears which shall be then due of the said annuity or rent-charge, and also of all such costs, charges, and expenses, as shall or may be for the time being due or payable, unto the said [*grantee*], his executors, administrators, or assigns, or unto the said [*trustee*], his executors, administrators, or assigns, under or by virtue of these presents, and upon payment by the said [*grantor*], her appointees or assigns, to the said [*grantee*], his executors, administrators, or assigns, of the sum of [*original purchase-money*], as and for the price or consideration-money for such redemption or repurchase as aforesaid; then and thenceforth the said annuity or rent-charge, and the powers and remedies hereinbefore given and reserved for enforcing payment thereof, and the term of ninety-nine years, determinable as aforesaid, hereby created in the aforesaid hereditaments, and the covenant hereinbefore contained on the part of the said [*grantor*], for payment of the same annuity or yearly rent-charge, shall thereupon respectively cease and determine; and the said [*trustee*], his executors, administrators, or assigns, shall thereupon, at the request, costs, and charges of the said [*grantor*], her appointees or assigns, re-assign and transfer the said dividends, interest, or annual proceeds of the aforesaid sums of £—— three per centum consolidated Bank Annuities, and £—— three per centum reduced Bank Annuities, and of such other stocks and funds as aforesaid, unto the said [*grantor*], her appointees, or assigns; and satisfaction shall thereupon, at the expense of the said [*grantor*], her heirs, appointees, executors, administrators, or assigns, be acknowledged upon the record of the judgment to be entered up by virtue of the aforesaid warrant of attorney.

Proviso that

PROVIDED ALSO, that the said warrant of attorney, and the

29. GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

judgment to be entered up by virtue thereof, shall be only a collateral security for the payment of the said annuity or rent-charge of £——, at the times and in manner hereinbefore appointed for payment thereof: *And accordingly it is hereby declared,* that no execution shall be sued out, upon or by virtue of such judgment, unless and until the same annuity or rent-charge, or some part thereof, shall be in arrear or unpaid, for the space of forty days next after any of the times hereinbefore appointed for payment thereof: *And* that in case the same annuity or rent-charge, or any part hereof, should be in arrear and unpaid for the space of forty days next after any of the times hereinbefore appointed for payment thereof, then and in every such case it shall be lawful for the said [*grantee*], his executors, administrators, or assigns, to sue out execution upon or by virtue of the same judgment: *And* out of the monies thereby to be levied and raised, to retain to, and reimburse, himself, and themselves respectively, all arrears which shall be due for the time being, of the said annuity or rent-charge, and all costs, charges, and expenses, which the said [*grantee*], his executors, administrators, or assigns, and the trustees and trustee for the time being of these presents, shall sustain or incur, by reason or in consequence of the non-payment of the same annuity or rent-charge, or in the suing out of such execution as aforesaid, or otherwise in relation thereto respectively: *And* that it shall not be necessary for the said [*grantee*], his executors, administrators, or assigns, to revive, or cause the said judgment to be revived, or to do any act, matter, or thing, to keep the same on foot, notwithstanding the said judgment should have been entered on record for the space of one year or upwards; [nor shall it be necessary for him or them to sue out any writ or writs of *scire facias*, to assess damages (*m*);] any rule or practice of the court in which the said judgment shall be entered up to the contrary notwithstanding: *And* that the said [*grantor*], her heirs, executors, or administrators, will not, nor shall, attempt by any ways or means, to take advantage of the said judgment not being revived; [nor of the want of issuing out any writ or writs of *scire facias* as aforesaid:] *And* that in case of any such attempt being made, these presents shall or may

warrant of attorney is intended only as a collateral security;

No execution to be sued out until annuity be in arrear for forty days.

Agreement that judgment need not be revived.

(*m*) [J. The words within brackets are wholly unnecessary.J.]

29. GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

be pleaded in bar. AND THE SAID [*grantor*], doth hereby, for herself, her heirs, executors, and administrators, covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that she the said [*grantor*] will not, during the continuance of this security, leave England or go beyond seas, without giving to the said [*grantee*], his executors, administrators, or assigns, as early notice thereof as conveniently may be: AND FURTHER, that she the said [*grantor*] will, from time to time, and at all times, during the continuance of the said annuity, whensoever thereunto requested by the said [*grantee*], his executors, administrators, or assigns, by letter or notice in writing, to be delivered to her, or left for her, at her usual or last place of abode; *And also*, in the event of her the said [*grantor*], preparing to go beyond seas as aforesaid, then without being so requested as aforesaid, unless prevented by illness or other inevitable accident, personally and gratuitously appear and attend, at such office or offices for life insurance within the cities of London or Westminster, or the liberties thereof, as she shall be so requested, for the purpose of enabling the said [*grantee*], his executors, administrators, or assigns, to insure the sum of [*purchase-money*], or any part thereof, in one or more sum or sums, upon the life of her the said [*grantor*]; *And also* will, whensoever thereunto requested as aforesaid, and particularly once at the least in every year, in the event of her going, and during the time she shall remain beyond seas as aforesaid, at her own costs and charges, procure, furnish, and deliver all such due and regular certificates of her being living, and of the state of her health, and also make answer to all questions relative to such insurance or insurances, which shall be necessary for the continuance or renewal thereof; *And* will, from time to time, pay to the said [*grantee*], his executors, administrators, or assigns, all such additional sums of money, for or in respect of such insurance as aforesaid, as shall or may be incurred, or rendered necessary, by reason or in consequence of her the said [*grantor*] going beyond seas [with interest for the same at the rate of £—— per centum per annum]; *And* the said additional premiums of insurance [and interest] shall be recoverable by and under all and every the securities and remedies for securing the annuity hereby granted, and in addition thereto, from time to time, as fully and as effectually to all intents and purposes as if a part

Agreement by grantor not to leave England without giving grantee notice:

to appear at insurance office:

during continuance abroad to send certificates of health:

and to pay grantee extra insurance for being abroad;

extra insurance to be recovered by same remedies as annuity;

29. GRANT BY APPOINTMENT AND DEMISE OF A FREEHOLD MOIETY, AND ASSIGNMENT OF DIVIDENDS.

thereof originally; *And further*, that she the said [*grantor*] will not do any act or thing, whereby, or by means whereof, any policy or policies for effecting such insurance as aforesaid, shall or may be or become, or be liable to be or to become, impeached, void, or voidable. PROVIDED ALWAYS, that the said [*trustee*], his executors, administrators, or assigns, shall not, nor shall any or one of them, be answerable for any involuntary losses, happening in the execution of the trust herein expressed: *And* that the receipt or receipts in writing, of him the said [*trustee*], his executors, administrators, or assigns, for any monies payable to him or them, by virtue of these presents, shall exonerate the person or persons paying the same from all responsibility with regard to the application thereof. AND the said [*trustee*] doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantor*], her heirs, appointees, and assigns, that the said [*trustee*], his executors, administrators, and assigns, will and shall from time to time, and at all times, upon every reasonable request, and at the costs and charges of the said [*grantor*], her heirs, appointees, or assigns, (unless hindered or prevented by fire or other inevitable accident), produce and shew forth, or cause to be produced and shewn forth, unto the [*grantor*], her heirs, appointees, and assigns, or to her, their, or any of their counsel, attornies, agents, or solicitors, or at any trial or hearing in any court of law or equity, or otherwise, as occasion shall be or require; and at the like request, costs, and charges, permit and suffer her, him, or them, to make and take copies of the indenture of settlement hereinbefore recited; *And also* will and shall in the meantime keep and preserve the same indenture of settlement safe, undefaced, unobliterated, and uncancelled (damage by fire, or other inevitable accident, only excepted). IN WITNESS &c.

grantor not to do any act to avoid policy.

Indemnity to trustee:

trustee's receipts to be discharges.

Covenant by trustee to produce settlement;

permit copies to be made;

and keep the original safely.

In witness &c.

30. GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

30. GRANT *of an* ANNUITY, *charged on* LEASEHOLD *Premises; Power of Distress by a Mortgagee who is paid off, and the Grantor, of the Annuity;* ASSIGNMENT *by the Mortgagee and Grantor to Trustees,* UPON TRUSTS, *to secure the Annuity out of the Rents, or by demise, mortgage, or sale;* COVENANTS *by the Grantor to enter into Covenants for Title with Purchasers and Mortgagees; to covenant to pay Mortgage-Money and Interest; to give a Power of Sale to Mortgagees; to join in Sales to be made by Mortgagees; to pay the Rent and perform the Covenants in the Lease until Sale, or Default made in paying Mortgage-Money; to indemnify the Trustees; to* INSURE *the Premises* AGAINST FIRE *in the Grantee's Name; with Power for the Grantee to insure on his Default:* DEFEAZANCE *on Judgment:* POWER *to repurchase: short Power to appoint new Trustees;* [*Variation where a Sum of Money is deposited in the hands of Trustees to pay off a subsisting Mortgage Debt* (*a*).]

Parties.

THIS INDENTURE, made &c., BETWEEN [*grantor*], of &c., of the first part; [*grantee*], of &c., of the second part; [*mortgagee*], of &c., of the third part; and [*two trustees*], of &c., of the fourth part. WHEREAS by indenture, bearing

Recital of a lease for years.

Consideration-money for an annuity may be paid to third persons for the use of the grantor.

(*a*) [J. There seems to be no objection, under the sixth section of the Annuity Act, to paying over part of the consideration-money for an annuity, to third persons, for a particular purpose, if the purpose for which the payment is made be for the exclusive benefit of the grantor. (See remarks, *ante*, p. 96). This is sometimes convenient where, as in the present case, part of the purchase-money is intended to be applied in liquidation of an existing mortgage, but which cannot be done simultaneously with the grant of the annuity on account of the refusal of the mortgagee to take his money without notice. The precedent in the text may be easily adapted to such a case, by making the trustees parties instead of the mortgagee, and adding the variations suggested in the present Editor's notes, referred to by the letters (*aa*). It seems to be proper that one at least of the trustees of the money should be nominated by the grantor. J.]

30. GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

date on or about &c., and made between [*lessor*] of the one part, and [*lessee*] of the other part, the said [*lessor*] did demise and lease unto the said [*lessee*], her executors, administrators, and assigns, *All those* three messuages or tenements adjoining to each other, with the vacant pieces of ground, or yard, and skittle-ground behind the same, situate, lying, and being on the south side of —— Lane, in the borough of ——, in the county of ——, one of which was then lately used as a public-house, and was called or known by the name or sign of the ——; all which three messuages or tenements and premises abut towards the north on —— Lane aforesaid, towards the south on —— Alley, towards the east in part on the passage leading from —— Lane into —— Alley, and in other part on the messuage or tenement thereinafter demised; towards the west, on a messuage or tenement then or then late in the tenure or occupation of ——: *And also all those* two other messuages or tenements adjoining on the north-east to the above-mentioned three messuages or tenements; which two messuages or tenements abut in front on the vacant piece of ground above mentioned, and on the south-west on the skittle-ground: *And also all that* messuage, tenement, and premises, situate, standing, and being on the north side of —— Alley aforesaid, and adjoining to the said vacant piece of ground and yard thereby demised: All which six messuages or tenements, vacant piece of ground or yard, skittle-ground, and premises, were then late in the tenure or occupation of [*A. B.*], his assigns or undertenants, but were then in the tenure or occupation of the said [*lessee*]. *To hold* the said messuages or tenements and premises, with the appurtenances, unto the said [*lessee*], her executors, administrators, and assigns, from ——, then last past, for the term of —— years thence next ensuing, at the clear yearly rent of £——.

Parcels.

And whereas by an indenture indorsed upon the said lease, bearing date on or about &c., and made between the said [*lessee*], of the one part, and the said [*grantor*], of the other part, the said [*lessee*] did assign and set over unto the said [*grantor*], his executors, administrators, and assigns, *The* messuages or tenements and premises above mentioned and described; together with all erections, buildings, and improvements then erected and built on the said pieces of ground or any of them: *To hold* the same unto the said [*grantor*], his executors, administrators, and assigns, for the

Recital of assignment.

30. GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

residue of the said term of —— years; *subject* nevertheless to the payment of the said yearly rent of £——, and to the performance of the covenants and agreements contained in the said lease, on the part of the lessee or assignee of the said premises. AND WHEREAS by indenture bearing date on or about &c., and made between the said [*grantor*] of the one part, and the said [*mortgagee*] of the other part, the said [*grantor*] did assign and set over unto the said [*mortgagee*], *All* the messuages or tenements, pieces or parcels of ground and premises above mentioned and described, with all erections, buildings, and improvements then erected and made on the said pieces of ground or any of them: *To hold* the same unto the said [*mortgagee*], his executors, administrators, and assigns, for all the then residue and remainder of the said term of —— years; *but subject* nevertheless to a proviso for redemption of the said premises on payment by the said [*grantor*] to the said [*mortgagee*] of the sum of £——, with lawful interest for the same, on the —— day of —— then next ensuing. AND WHEREAS the said [*grantee*] hath contracted with the said [*grantor*] for the purchase of an annuity of £——, payable during the lives of [*two nominees*], of &c. and during the life of the longest liver of them, at the price of £——, which annuity it was agreed should be secured by a judgment to be entered up against the said [*grantor*], and also upon the messuages or tenements and premises above mentioned and described. AND WHEREAS there is now due and owing to the said [*mortgagee*], for principal money and interest upon his said security, the sum of £——, which it hath been agreed between the said [*grantor*] and [*grantee*] shall be paid off and discharged (*b*) by the said [*grantor*]. AND WHEREAS the

Recital of mortgage.

Recital of contract for annuity.

Recital of amount of mortgage-money and interest.

Recital of war-

Variation where part of the consideration-money is to be applied to pay off a mortgage.

(*b*) [J. Out of the said purchase-money or sum of £——; but inasmuch as a notice which has been given to the said [*mortgagee*] by the said [*grantor*], of his intention to pay off the said mortgage debt is not yet expired, and the said [*mortgagee*] has declined to receive the same until the expiration of the said notice,* it has been agreed between the said [*grantor*] and [*grantee*], that the sum of £——, part of the said sum of £——, the purchase or consideration-

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* As to notice to mortgagees, *vide post*, Vol. 5, p. 379.

30. GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

said [*grantor*] had executed a warrant of attorney, bearing even date with these presents, thereby authorizing certain attornies therein named, to confess a judgment against him in her Majesty's Court of Queen's Bench, at Westminster, in an action of debt at the suit of the said [*grantee*], his executors or administrators, for the sum of £——, with costs of suit. NOW THIS INDENTURE WITNESSETH, that in further pursuance of the said agreement, and in consideration of the sum of £—— of lawful British money, by the said [*grantee*] paid to the said [*grantor*], at the time of the sealing and delivery of these presents (*c*), the receipt whereof the said [*grantor*] doth hereby acknowledge, and of and from the same and every part thereof doth acquit, release, and discharge the said [*grantee*], his executors, administrators, and assigns, and every of them for ever, by these presents, *he* the said [*grantor*], by these presents *doth* grant and confirm unto the said [*grantee*], his executors, administrators, and assigns, for and during the lives of the said *two* [*nominees*], and the life of the longest liver of them, *An* annuity or yearly sum of £—— of lawful British money, to be issuing and payable out of the messuages or tenements and premises hereinbefore mentioned and described: and to be paid and payable unto the said [*grantee*], his executors, administrators, and assigns, in the common dining-hall of Lincoln's Inn, in the county of Middlesex, by four equal quarterly payments on the —— day of &c. in every year, the first payment thereof to be made on the —— day of —— next ensuing the date hereof [if the said [*nominees*] or either of them shall be then living]: together with a proportional part of the same annuity, for the time which shall elapse between the day of payment which shall next immediately precede the day of the death of the longest liver of

rant of attorney.

Testatum.

Grant of annuity charged on leaseholds for the lives of two nominees and the life of the survivor.

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money of the said annuity, shall be paid to the said [*trustees of the mortgage-money*] upon the trusts hereinafter expressed.J.]

(*c*) [J.And also in consideration of the sum of £—— of like lawful money at the same time paid by the said [*grantee*] to the said [*trustees of the money*], at the request and by the direction of the said [*grantor*], the receipt and payment of which two several sums of £—— and £——, making the said sum of £——, the said [*grantor*] and also the said [*trustees*] do hereby respectively acknowledge, &c.J.]

30. GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

them the said [*two nominees*], up to and inclusive of the day of his or her decease; such proportional part to be paid immediately after the decease of such longest liver; and the said annuity and proportional part to be paid and payable without any deduction or abatement thereout for or on any account whatsoever (*d*). AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, will or shall pay unto the said [*grantee*], his executors, administrators, and assigns, during the lives of the said [*nominee*] and [*other nominee*], and during the life of the longest liver of them, the said annuity or yearly sum of £——, on the days and at the place hereinbefore mentioned and appointed for payment thereof, and without making thereout any deduction or abatement whatsoever. AND for the more effectually securing the payment of the said annuity, the said [*grantor*], and also the said [*mortgagee*], at the request of the said [*grantor*], do, and each of them doth (according to their respective estates and interests in the said premises, and so far as they can or may) hereby give and grant to the said [*grantee*], his executors, administrators, and assigns, full power and authority, when and as often as the said annuity, or any part thereof, shall be behind and unpaid for the space of fourteen days next after any of the said days appointed for payment thereof, to enter into and upon the said messuages or tenements and

Covenant to pay annuity.

Power of distress on leasehold lands by grantor and mortgagee.

Habendum is unnecessary in the grant of an annuity.

(*d*) The above deed was drawn by an eminent conveyancer who died a few years since. It is observable, that there is no habendum of the annuity, although it is usual in most modern grants of annuities or rent-charges to insert an habendum; *ut ante*, pp. 236, 258; and 2 Sand. Uses, 104, 2d Ed.; 176, 1st Ed.; but it is a formal, and not a necessary, part of the deed. See the form of such a grant without an habendum, West's Symboleography, Part 1, sect. 320, Ed. 1605. 2 Horsman's Conveyancing, 14, Ed. 1744. When an habendum was used in ancient deeds, the term for which the annuity was granted was not mentioned in the premises of the grant. *Vide* West's Symb. Part 1, sect. 298, &c. and "A Grant of an Annuity, penned by Mr. Edmund Plowden," Conveyancer's Light, or Compleat Clerk, p. 1, and the other succeeding Forms; 1 Sir O. Bridgman's Conveyances, 77, 244, &c. 5th Ed.; 1 Modern Conveyancer, 4, &c. 3d Ed.; 2 Scrivener's Guide, 537, &c. 5th Ed.; 1 Jacob's Accomplished Conveyancer, 264, &c.; Piggot's Conveyancing, 276, 278. The usual modern form appears first in 2 Horsman's Conveyancing, 10.

premises, or into or upon any of them, or into or upon any part of them, or any of them, or into or upon the appurtenances belonging to them, or any of them, and there to take and distrain any goods, chattels, and effects, which may be found thereupon; and in making such distress or distresses, to act therein in all respects as landlords are entitled to do, in making distresses for rent in arrear; to the intent that by such distress or distresses, or otherwise, all arrears of the said annuity, and all costs, charges, damages, and expenses, which the said [*grantee*], his executors, administrators, or assigns, may sustain or be put unto, by reason of the non-payment of the said annuity, or any part thereof, on the days appointed for payment of the same: and also all expenses attending the making of any such distresses, may be fully paid and satisfied. AND THIS INDENTURE FURTHER WITNESSETH (*e*), that for the considerations aforesaid, and for better securing the due payment of the said annuity, and in consideration of [*mortgage-money and interest*], of lawful British money, paid by the said [*grantor*] to the said [*mortgagee*], the receipt whereof he doth hereby acknowledge; and of and from the same and every part thereof doth hereby acquit, release, and discharge the said [*grantor*], his executors, administrators, and assigns, and doth admit that the same is in full satisfaction of all principal money and interest due and owing to him upon the said mortgage: *And also* for and in consideration of the sum of ten shillings a-piece of like lawful money to each of them the said [*grantor*] and [*mortgagee*], paid by the said [*trustees*], at or before the sealing and delivery of these presents; the receipt whereof is hereby acknowledged; *He* the said [*mortgagee*], at the request of the said [*grantor*], and on the nomination of the said [*grantee*], testified by their being parties to and executing these presents, by these presents *doth* bargain, sell, assign, transfer, and set over; *And* the said [*grantor*] by these presents *doth* grant, bargain, sell, assign, transfer, and set over, ratify, and confirm, unto the said [*trustees*], their executors, administrators, and assigns, ALL and singular the messuages or tenements and

30. GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

Further testatum.

Assignment of leasehold by mortgagee and grantor.

Parcels.

(*e*) [J. If the mortgage is to be paid off in the manner before suggested, *ante*, this part of the precedent will of course be varied. The grantor for the consideration before expressed, with the addition of a nominal consideration, will simply assign. J.]

30. GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

premises above mentioned and described; AND ALSO all the estate, right, title, interest, term of years yet to come and unexpired, property, claim, and demand whatsoever, both at law and in equity, of them the said [*mortgagee*] and [*grantor*], and each of them, of, in, and to the same, and every part thereof. TO HAVE AND TO HOLD the same messuages or tenements and premises, with their and every of their appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, henceforth, for and during all the residue and remainder now to come and unexpired of the said term of —— years: *But subject* nevertheless to the payment of the rent of £——; and to the performance of the covenants and agreements by and in the said lease reserved and contained on the part of the lessee or assignee of the said premises, to be paid and performed: AND UPON TRUST to permit and suffer the said [*grantor*], his executors, administrators, and assigns, (he and they paying the said rent, and performing the said covenants and agreements), to receive and take the rents and profits of the said premises for his and their own use, until default shall be made in payment of the said annuity on the days hereinbefore appointed for payment thereof. AND in case the said annuity, or any part thereof, should be unpaid for the space of twenty-one days next after any of the said days of payment (being lawfully demanded at any time after the same shall become due), then, and so often as the same shall happen, UPON TRUST, that they the said [*trustees*], or the survivor of them, his executors or administrators, or their or his assigns, shall, out of the rents and profits of the said messuages or tenements, and premises, or by demising, mortgaging, or selling the same, or any part thereof, for all or any part of the then residue of the said term of —— years, or by such other ways and means as to the said [*trustees*], or the survivor of them, his executors, administrators, or assigns, shall seem meet, raise and levy such sum and sums of money as will be sufficient to pay and satisfy the said annuity, or so much thereof as shall be in arrear and unpaid; and also all such sums of money, costs, damages, and expenses (if any) as he the said [*grantee*], his executors, administrators, or assigns, shall sustain or be put unto by reason of the non-payment of the said annuity, or any part thereof, on the days or times appointed for payment thereof; and also all such costs, charges, and expenses as they

All the estate.

Habendum for residue of term;

subject to the rent and covenants.

Upon trust to permit grantor to enjoy premises until default, he paying the rent and performing the covenants.

On default,

upon trust out of rents, or by demising, mortgaging, or selling premises to raise money to pay annuity;

and costs.

the said [*trustees*], their executors, administrators, or any of them, may expend or be put unto in and about the execution of the trusts hereby in them reposed; and shall pay and apply the monies so to be raised accordingly: And after full payment of the said annuity, and all such costs, charges, and expenses as aforesaid, to permit and suffer the said [*grantor*], his executors, administrators, and assigns, from time to time to receive and take the surplus of the rents and profits of the said premises; and also to pay to him or them the surplus (if any) of the monies so to be levied and raised as aforesaid, for his and their own benefit (*g*). PROVIDED ALWAYS, that after the decease of the longest liver of them the said [*two nominees*], and full payment of the said annuity, and of all arrears thereof, and of such proportional part thereof as aforesaid, and of all such costs, charges, and expenses as aforesaid, then and in such case the said [*trustees*], their executors, administrators, or assigns, will or shall, at the costs and charges of the said [*grantor*], his executors, administrators, or assigns, re-assign the said messuages or tenements and premises, or such of them as shall not have been sold or mortgaged for the purposes aforesaid, unto the said [*grantor*], his executors, administrators, or assigns, for his or their own use and benefit, free from all incumbrances to be made or suffered by them the said [*trustees*], or their respective executors, administrators, or assigns. AND for the purpose of facilitating any such sale or mortgage as aforesaid, *it is hereby declared and agreed*, that all contracts, sales, and conditions of sales, mortgages, (with or without power of sale), assignments, and things, which shall be entered into, made, and executed by the said [*trustees*] or the survivor of them, his executors or admini-

30. GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

and subject thereto, for grantor.

After decease of survivor of nominees, and payment of annuity, &c., trustees to re-assign.

Sales and mortgages to be valid without grantor's concurrence.

(*g*) [J. A trust for sale to secure an annuity ought in general to be accompanied by a trust for investment of the purchase-money; *ut ante*, pp. 210, 213 (*c*); for if the produce of the sale is to be paid over to the grantor after discharging the arrears, it would be necessary for the annuitant, in order to avoid diminishing the security, from time to time to sell only so much of the property as would produce sufficient to discharge the arrears; a course which would obviously be attended with much disadvantage and inconvenience. The propriety of clothing the annuitant with a power of sale and investment depends of course upon circumstances. Where there is no prior incumbrance, and the property yields an immediate income sufficient to satisfy the annuity, there is obviously less reason for requiring it, than where the contrary is the case. J.]

As to trusts for the investment of purchase-monies.

30. GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

trators, of or concerning the said messuages or tenements and premises, or any part or parts thereof, shall, to all intents, constructions, and purposes whatsoever, be as valid and effectual in the law, although the said [*grantor*], his executors, administrators, or assigns, shall not join therein, execute the same, or assent thereto, as the same would have been in case the said [*grantor*], his executors, administrators, or assigns, had actually joined therein and executed the same. AND *it is hereby further declared and agreed,* that the receipts of the said [*trustees*], or the survivor of them, or the executors or administrators of such survivor, shall be good and sufficient discharges to the purchaser or purchasers, mortgagee or mortgagees, of the said premises, or of any part or parcel thereof, for the purchase or mortgage money thereof; and to the person or persons paying the rents thereof; or for so much of such purchase or mortgage money or rents, as in such receipts shall be acknowledged to be received: *And* that such purchaser or purchasers, mortgagee or mortgagees, or person or persons paying such rents as aforesaid, his, her, or their executors, administrators, or assigns, shall not afterwards be answerable or accountable for any loss or misapplication, or non-application, of such purchase or mortgage money, or rents, for which receipts shall be so taken as aforesaid: *And it is also declared,* that it shall not be incumbent upon any such purchaser or mortgagee, or person paying any of the said rents, to see or inquire into the necessity or expediency of any such sale or mortgage, or of the receipt by the said [*trustees*], or the survivor of them, his executors or administrators, of the said rents, or any part thereof (*h*). AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*trustees*], their executors, administrators, and assigns, that, for and notwithstanding any act, deed, or thing whatsoever, by him the said [*grantor*] at any time heretofore made, done, or committed, or willingly suffered to the contrary, the said indenture of lease is a good and subsisting lease, valid in the law, and not assigned, surrendered, forfeited, or otherwise determined or become void, or voidable:

Receipts of trustees to be good discharges.

Covenants with the trustees by the grantor restricted to his own acts, that the lease is subsisting and valid.

(*h*) The covenant from the mortgagee, that he has not incumbered, is inserted at the end of this deed: it is usually placed before the covenants for title; but it is of no importance where it is placed, excepting so far as regards technical uniformity.

30. GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

AND that for and notwithstanding any such act, matter, or thing as aforesaid, they the said [*grantor*] and [*mortgagee*], now have in themselves, or one of them hath in himself, good right, full power, and lawful and absolute authority, by these presents, to assign and assure the said messuages or tenements and premises, with the appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, upon the trusts nevertheless, and in manner aforesaid, according to the true intent and meaning of these presents: AND FURTHER, that after any such sale shall be made as aforesaid, or in case the said premises or any part thereof, should be mortgaged, then after default shall be made in payment of the mortgage-money and interest, or any part thereof respectively, the said messuages or tenements and premises, and such of them as shall be so sold or mortgaged, shall, and lawfully may, from time to time, and at all times thereafter during the residue of the said term of —— years therein, be peaceably and quietly held and enjoyed, and the rents, issues, and profits thereof be received and taken, by the purchaser or purchasers, mortgagee or mortgagees thereof, his, her, or their executors, administrators, and assigns, for his, her, and their own use and benefit, without the lawful molestation, interruption, or disturbance of him the said [*grantor*], his executors, administrators, or assigns, or any person or persons lawfully claiming any estate, right, or interest, either at law or in equity, in, to, or out of the same, or any part or parcel thereof, by, from, under, or in trust for him, them, or any of them: AND [that] free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise by him the said [*grantor*], his heirs, executors, or administrators, well and sufficiently saved, defended, and kept harmless, and indemnified of, from, and against all former and other titles, charges, and incumbrances whatsoever, made, done, or committed, or knowingly or willingly suffered by him the said [*grantor*], or by any person or persons lawfully claiming by, from, under, or in trust for him, or by, through, or with his act, means, consent, default, privity, or procurement: *subject* only to the payment thenceforth of the yearly rent reserved by the said indenture of lease, or of a proportional part thereof: and to the observance and performance in respect of the premises so sold or mortgaged, of the covenants and agreements therein contained on the part of the

that grantor and mortgagee have good right to assign,

for peaceable enjoyment after sale, or default in payment of mortgage money;

free from incumbrances;

but subject to the rents and covenants of the lease or of a proportional part thereof;

30. GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

lessee or assignee of the said premises: AND MOREOVER, that he the said [*grantor*], his executors and administrators, and all other persons whosoever, having, or lawfully or equitably claiming any estate, right, title, trust, or interest, in, to, or out of the same premises, or any part thereof, by, from, under, or in trust from him, them, or any of them, will and shall from time to time, and at all times, after any such sale or mortgage shall be made, at the reasonable request, and at the costs and charges in the law of the purchaser or purchasers, mortgagee or mortgagees, his, her, or their executors, administrators, or assigns, make and execute, or cause and procure to be made and executed, all further lawful acts, assignments, and assurances in the law whatsoever, for more perfectly and absolutely assigning the said premises, or such of them as shall be sold or mortgaged, with their appurtenances, unto such purchaser or purchasers, mortgagee or mortgagees, his, her, or their executors, administrators, or assigns, for all the residue which shall be then to come and unexpired of the said term of —— years: *As* by such purchaser or purchasers, mortgagee or mortgagees, his, her, or their executors, administrators, or assigns, or by their or any of their counsel learned in the law, shall be devised or advised and required: AND FURTHER, that upon making any such sale or mortgage as aforesaid, he the said [*grantor*], his executors, administrators, or assigns, will or shall (if required) join and concur in the making thereof, and in executing the several assignments and assurances of the said premises to the purchaser or purchasers, mortgagee or mortgagees thereof, or of such part or parts thereof as shall be so sold or mortgaged; and enter into all usual and reasonable covenants with such purchaser or purchasers, mortgagee or mortgagees, his, her, or their executors, administrators, and assigns, for the estate, title, possession, and further assurance of the same premises, or of such of them as shall be so sold or mortgaged; and enter into the usual and proper covenant with such mortgagee or mortgagees, for the due payment of the mortgage-money and interest; *And*, in case any mortgagee or mortgagees should request the same, will or shall empower such mortgagee or mortgagees to sell the premises mortgaged, in case default should be made in the due payment of the mortgage-money and interest thereby secured, or any part thereof; and in every mortgage security in which such power of sale shall be given, he the said [*grantor*], his

For further assurance.

Covenant by grantor to join in making sales and mortgages;

and enter into usual covenants with purchasers and mortgagees;

and to covenant to pay mortgage-money and interest;

mortgagees to have power of sale;

grantor to covenant to join in sales to be

executors or administrators, will or shall enter into covenants with such mortgagee or mortgagees, to join and concur (if requested) in any such sale or sales; *nevertheless* it shall be declared in any such mortgage security, that the joining or concurring of the said [*grantor*], his executors or administrators, shall not be essential to the validity of any such sale, but only for the purchaser's satisfaction: AND MOREOVER, that he the said [*grantor*], his heirs, executors, or administrators, from time to time, and at all times hereafter, until any such sale shall be made as aforesaid; or in case the said premises, or any part thereof, should be mortgaged, then until the mortgagee or mortgagees may enter thereon for default of payment of the said mortgage-money and interest, or any part thereof, will or shall pay the yearly rent reserved by the said lease: and observe, perform, and keep all and singular the covenants and agreements therein contained on the part of the lessee of the said premises: AND (*i*) will or shall, from time to time, and at all times hereafter, keep harmless and indemnified the said [*trustees*], their heirs, executors, and administrators, and every of them, and the lands and tenements, goods and chattels of them and every of them, of, from, and against the payment of the said rent, and the performance of the said covenants and agreements, and also, of, from, and against all and all manner of actions, suits, claims, and demands whatsoever, for or on account of the said rent, or any part thereof, or for or on account of the breach or non-performance of any of the said covenants and agreements. AND FURTHER, that he the said [*grantor*], his heirs, executors, or administrators, will or shall, from time to time, and at all times hereafter, so long as the said annuity shall remain payable, insure and keep insured in the name or names of the said [*grantee*], his executors, administrators, or assigns, in some good public fire insurance office in London or Westminster, the said messuages or tenements

30. GRANT AND ASSIGNMEMT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

made by mortgages;

but his consent not to be essential.

Covenant by grantor to pay rent and perform covenants until premises are sold, or default made in paying mortgage-money:

and to indemnify trustees from rent and covenants.

Covenant by grantor to insure premises in grantee's name, so long as annuity remains payable;

(*i*) If the grantor and grantee are both to join in the covenant to indemnify the trustees, the covenant may immediately precede the defeazance on the judgment, *post*, p. 283, and the lien part be *ut post*. "with the said [*trustees*], their heirs, executors, and administrators" &c., "indemnified the said [*trustees*], their heirs, executors, and administrators, and every of them, and the lands, &c., of them and every of them," *ut supra vel post*.

Covenant by grantor and grantee to indemnify trustees against rents and covenants in lease.

30. GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

and premises, or such of them as shall not be sold by virtue of the trusts aforesaid, in the full sum of £——: and forthwith deliver the policy or policies of every such insurance and the receipt or receipts for the annual premium thereof, unto the said [*grantee*], his executors, administrators, or assigns. PROVIDED ALWAYS, *and it is hereby agreed*, that if the said [*grantor*], his executors or administrators, should at any time, whilst the said annuity shall be payable, and the said messuages and buildings shall remain unsold as aforesaid, refuse or neglect to insure the said sum of £—— in the name or names of the said [*grantee*], his executors, administrators, or assigns, or to deliver the policy or policies of every such insurance unto him or them as aforesaid, then and so often as the same shall happen, it shall and may be lawful for the said [*grantee*], his executors, administrators, or assigns, in like manner to insure the same in the said sum of £——, or any less sum, and for such length of time as he or they shall think proper: AND *it is hereby declared*, that all sums of money which shall be recoverable on any such policy of insurance, shall forthwith be laid out and expended in rebuilding or repairing the premises insured, or such of them as may be destroyed or injured by fire, in order the better to secure the due payment of the said annuity. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby further covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, will or shall, upon demand in writing left at his or their place or places of abode, pay and satisfy unto the said [*grantee*], his executors, administrators, or assigns, the premiums, costs, and charges which he the said [*grantee*], his executors, administrators, or assigns, or any of them, shall expend or be put unto, in the making of any such insurance as aforesaid, or which they or any of them shall expend or be put unto, in or about the receiving or recovering the money thereby recoverable. With interest on all such premiums, costs and charges, at the rate of five pounds per centum per annum, from the time or respective times of the expenditure thereof. AND *it is hereby declared and agreed*, that in case the said [*grantor*], his heirs, executors, or administrators, should make default in payment of such last-mentioned premiums, costs, charges, and expenses, with interest as aforesaid, for the space of fourteen days next

If grantor neglect to insure, or to deliver policy, grantee to insure.

Money recovered under policy to be expended in rebuilding premises.

Covenant by grantor to repay grantee premiums and costs.

With interest.

And on default in payment, grantee to distrain for the amount.

after any such demand shall be made as aforesaid, then and in such case, the same shall be levied and raised by distress, in the same manner as is hereinbefore mentioned with respect to the arrears of the said annuity, anything herein contained to the contrary thereof notwithstanding. PROVIDED, nevertheless, that the total amount of the principal monies to be ultimately recoverable by virtue of the power lastly hereinbefore contained shall not exceed the sum of £——. PROVIDED ALWAYS, that the judgment to be entered upon the said warrant of attorney, shall be considered as a security only for the better securing of the payment of the said annuity, on the days or times appointed for the payment thereof: AND that no execution shall be taken out upon the said judgment unless some payment of the said annuity, or some part thereof, should be in arrear for twenty-one days next after some or one of the days or times hereby appointed for payment thereof: AND *it is also declared and agreed*, that when and as often as the said annuity, or any part thereof, shall be behind and unpaid by the space of twenty-one days next after any of the days or times appointed for payment thereof, then and in every such case, it shall be lawful for the said [*grantee*], his executors, administrators, and assigns, to sue out such execution or executions upon the said judgment as he or they shall think fit or be advised, for the recovery of the arrears of the said annuity, and all costs and charges which he the said [*grantee*], his executors, administrators, or assigns, or any of them, shall sustain or be put unto by reason or in consequence of the non-payment thereof: AND *it is also agreed*, that it shall not be necessary for the said [*grantee*], his executors, administrators, or assigns, to revive, or cause to be revived, the said judgment, or to do any act, matter, or thing to keep the same on foot, notwithstanding the same shall have been entered on record for the space of one year or upwards, and notwithstanding any rule or practice of the Court in which the said judgment shall be entered on record to the contrary: AND that he the said [*grantor*], his heirs, executors, or administrators, will not, nor shall, take, or attempt to take, any advantage from want of reviving or keeping the said judgment on foot. PROVIDED ALWAYS, that from and after the decease of the survivor of them the said [*nominees*], and full payment of the said annuity, and such proportional part thereof as aforesaid, and all such costs, charges, damages,

30. GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

Limitation of amount of insurance monies to be recoverable.

Judgment to be entered on warrant of attorney to be a further security only.

No execution to be sued until annuity be in arrear for twenty-one days.

Not to be necessary for grantee to revive judgment.

Grantor not to take advantage of not reviving judgment.

After death of nominees, and payment of annuity, &c., grantee to acknowledge sa-

30. GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

and expenses in anywise relating to the said judgment, he the said [*grantee*], his executors, administrators, or assigns, will or shall, at the request, costs, and charges of the said [*grantor*], his heirs, executors, or administrators, acknowledge satisfaction of the said judgment upon the record thereof. PROVIDED FURTHER, that in case the said [*grantor*], his heirs, executors, or administrators, should at any time hereafter be desirous of repurchasing the said annuity, and of such intention should give unto the said [*grantee*], his executors, administrators, or assigns, six calendar months' notice in writing, then and in such case, he the said [*grantee*], his executors, administrators, or assigns, shall and will, at the expiration of the said period of six calendar months, on receiving all sums of money which shall be due for arrears of the said annuity, with a proportional part thereof from the last day of payment next preceding such repurchase, up to and inclusive of the day of repurchasing the same, and also such premiums, costs and charges of insurance, and interest thereon as aforesaid, accept and take the said sum of £——, as and in full for the repurchase of the said annuity or yearly sum of £——: AND on receipt of the said sum of £——, and all arrears of the said annuity, and of such proportional part thereof as aforesaid, and all costs, charges, and expenses as aforesaid, will or shall, at the costs and charges in the law of him the said [*grantor*], his heirs, executors, or administrators, *And* they the said [*trustees*], their executors, administrators, or assigns, will or shall, at the costs and charges in the law of the said [*grantee*], his executors or administrators, assign the said messuages or tenements and premises, or such part of them as shall not have been sold or mortgaged under the trust hereinbefore declared, unto the said [*grantor*], his executors, administrators, or assigns, or as he or they shall direct or appoint for the residue then to come of the said term of —— years therein, free from all incumbrances to be made or suffered by them the said [*trustees*], or either of them, or the executors, administrators, or assigns of them, or either of them (*k*); and he the said [*grantee*], his executors, adminis-

tisfaction on judgment.

Power to repurchase on giving six months' notice.

Grantee to acknowledge satisfaction on judgment on repurchase, and then annuity and all powers, &c., cease.

Trustees to reassign premises on repurchase of annuity.

(*k*) As the trustees only become liable to the rent and covenants as assignees, and as the grantor, *ante*, p. 281, covenants to indemnify them therefrom, it need not be mentioned here, that the re-assignment shall contain such a provision.

trators, or assigns, will or shall acknowledge, or cause satisfaction to be acknowledged, on the record of the judgment which shall be entered up on the said warrant of attorney (*l*); and then and in such case the said annuity or yearly sum of £——, and all powers and authorities herein contained for enforcing the payment thereof, shall cease, determine, and be void, anything herein contained to the contrary thereof in any wise notwithstanding. And *it is hereby declared*, that in case the said [*trustees*], or either of them, or any trustee or trustees to be appointed by virtue of this provision, should die, or decline or become unable to act in the trusts hereby created, then a new trustee or trustees may be appointed by the trustee or trustees so declining to act, or by the execu-

30. GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

Power to appoint new trustees.

(*l*) The draft merely provided that the deed should be delivered up to be cancelled, which is incorrect; for an estate or interest once absolutely vested cannot be devested by merely cancelling the deed creating it; *Leech* v. *Leech*, 2 Ch. Rep, 100; whether the conveyance took effect by livery of seisin, or by lease and release; Gilb. Evid. 107, 4th Ed.; or whether the estate lie in livery, or in grant; *Bolton* v. *Bishop of Carlisle*, 2 H. Bl. 263, 264; or be a settlement of money; *Hudson's case*, cited Pr. Ch. 235: nor can a lease for years be surrendered by cancelling the indenture; *Magennis* v. *Macculloch*, Gilb. Eq. Cas. 235; *Roe* d. *E. of Berkeley* v. *Archb. of York*, 6 East, 100; 2 Smith, 167, [*infra*, Vol. 4, p. 486:] nor consequently can a lease for years assigned be revested in the assignor by cancelling the assignment. For these purposes the freehold estate should be conveyed, the benefit of the settlement should be released, the lease for years should be surrendered, and the leasehold estate should be assigned. [The distinction appears to be that an estate created or transferred by a deed cannot be devested by cancelling the deed; because once created, it exists independently of the deed: but a mere contract or obligation, of which the deed is the essence, may be put an end to, by destroying the deed with that intent. See *Argoll* v. *Cheney*, Palm. 403.]

An estate cannot be devested by cancelling the deed creating it.

Although a bond, *Peeres* v. *Bishop*, Dyer, 112 a, or the covenants, &c. in a deed, may become void by an intentional cancellation of the instrument by the person entitled to the benefit of it; yet it is always advisable for him to give a release, or to sign an indorsement on the bond or deed, either acknowledging satisfaction, or that the bond or deed was cancelled by him for the purpose of making the same void.

Cancellation of bond or deed of covenants.

The above observations as to cancellation must be distinguished from the case of a term of years, created with a proviso, that when the purposes for which it was granted are satisfied, the term shall cease; for in the latter case, on the happening of the event appointed for its determination, the term ceases, and the right of the immediate reversioner to the possession is accelerated. But an estate of freehold, under a common law conveyance, cannot cease by virtue of a proviso made at the time of its creation. Co. Litt. 214. *b*.

A term for years may cease by proviso, but not an estate of freehold created at common law.

30. GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

tors or administrators of the trustee so dying; and in every such case the said messuages or tenements and premises, or such of them as may not be sold by virtue of these presents, shall be assigned and conveyed, so as to be vested in such new and such surviving or continuing trustees, or in such new trustees only, as the case may happen, upon the same trusts and with the same powers as are hereinbefore mentioned and declared concerning the same. AND *it is further declared*, that the said [*trustees*], and the trustees or trustee for the time being of the said trust premises, shall not be answerable one for another, and by no means for any involuntary loss; and that they shall be allowed, and may retain to, and reimburse themselves, out of the money to arise from any such sale or mortgage to be made by virtue of these presents, all their costs, charges, damages, and expenses, occasioned by the due execution of the trusts hereby in them reposed. AND THE SAID [*mortgagee*], for himself, his heirs, executors, and administrators, doth covenant with the said [*trustees*], their executors, administrators, and assigns, by these presents, that he the said [*mortgagee*] hath not made, done, or committed, or knowingly or willingly suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the messuages or tenements and premises hereby assigned, or intended so to be, or any of them, or any part or parts thereof, or the said term of —— years therein are, is, can, shall, or may be assigned, surrendered, forfeited, charged, affected, or incumbered in title, estate, or otherwise howsoever (*m*). IN WITNESS &c.

Trustees to be indemnified, and to retain their expenses.

Covenant by mortgagee that he has not incumbered.

In witness, &c.

Declaration of the trusts of part of the purchase-money paid to the trustees.

(*m*) [J. "AND *it is hereby declared and agreed*, that the said [*trustees of the mortgage-money*], and the survivor of them, his executors or administrators, shall stand possessed of the said sum of £——, paid to them as hereinbefore mentioned, upon the trusts and for the intents and purposes hereinafter expressed concerning the same, that is to say; *Upon trust* forthwith to lay out and invest the same, in their or his own names or name, in the purchase of Exchequer Bills, or Navy, Transport, or Victualling Bills of the British government, until the notice hereinbefore mentioned to have been given to the said [*mortgagee*] shall have expired, or at such earlier time as he shall agree to accept his said mort-

30. GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

gage debt; And after the expiration of such notice, or at such other time as aforesaid; *Upon trust* to sell and dispose of the said Exchequer Bills, or other securities so to be purchased as aforesaid, and out of the proceeds of such sale, and also out of the dividends and interest (if any) accruing from the said securities in the meantime; *Upon trust* (after paying and retaining the costs and expenses of obtaining an assignment of the said mortgaged premises from the said [*mortgagee*], his executors, administrators, or assigns, and otherwise attending the execution of this present trust), to pay off and discharge the said sum of [*mortgage-money*], and the interest which shall be then due thereon. And if any balance or overplus shall after such payment remain in the hands of the said [*trustees*] unapplied to the purposes aforesaid: *Upon trust* to pay such balance or surplus unto the said [*grantor*], his executors, administrators, or assigns, to and for his or their own use and benefit. [AND *the said [*grantor*] doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his executors or administrators, will or shall, at his or their own costs and charges, join in and execute any deed or deeds, indenture or indentures, for the purpose of authorizing and directing the said [*mortgagee*], his executors, administrators, or assigns, to assign the said leasehold premises unto the said [*trustees of the term*], their executors, administrators, and assigns, for all the residue which shall be then unexpired of the said term of —— years, as by the said [*trustees of the term*], their executors, administrators, or assigns, shall be required; but it is hereby declared, that nothing in this present covenant contained, shall extend, or be deemed or construed to extend, to render any such authority or direction from the said [*grantor*], his executors or administrators, requisite or necessary for the purpose of warranting or authorizing the said [*mortgagee*], his executors, administrators, or assigns, to make such assignment as aforesaid, or to deliver up the title deeds of the said premises to the said [*grantee*], his executors, administrators, or assigns,

Covenant by grantor to execute any direction to mortgagee to assign.

* [This covenant is not necessary, and perhaps had better be omitted.]

30. GRANT AND ASSIGNMENT OF LEASEHOLDS TO TRUSTEES FOR SALE, MORTGAGE, &c.

which the said [*mortgagee*], his executors, administrators, or assigns, is and are thereby authorized and directed to do without any further consent or concurrence of the said [*grantor*], his executors or administrators.] IN WITNESS &c.J.]

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31. GRANT OF TWO ANNUITIES TO TWO PERSONS; ASSIGNMENT OF LEASEHOLDS TO TRUSTEE FOR SALE, MORTGAGE, &c.

31. GRANT *of two distinct Annuities to two Persons for the Grantor's Life, charged on* LEASEHOLD *Premises demised by separate Leases:* ASSIGNMENT *of the Premises to a* TRUSTEE, *Upon trust after default in Payment, out of the Rents, or by Sale or Mortgage, to pay the Annuities and all Costs:* POWER *for Trustee to repair, and insure: Monies raised for paying both Annuities shall be paid* WITHOUT PRIORITY: *joint and separate* COVENANTS *by Grantor and Grantees to indemnify Trustee from Rents and Covenants in Lease:* DEFEAZANCE *&c. on two several Judgments: Power to* REPURCHASE.

Parties.

THIS INDENTURE, made &c., BETWEEN [*grantor*], of &c., of the first part: [*grantee*], of &c., and [*other grantee*], of &c., of the second part; and [*trustee*], of &c., of the third part. WHEREAS by indenture bearing date on or about (*a*)

Recital of lease for years;

Effect of mistake in recital of date of lease, &c.

(*a*) Sometimes an error in the recital of the date of the deed is material, and may affect the validity of the title; for instance, a lease bearing date the 1st of March, is recited as bearing date the 2nd of March, and then there is an assignment of all the lands which were demised by the "hereinbefore in part recited indenture of lease." Now, as there is not any such indenture of lease, there is, in point of law, no valid assignment; for, as the date in the recital is the essential part of the descriptive terms used in the assignment, the assignment itself fails of effect.

Mode of avoiding consequences of mistake in recital of dates.

To avoid such and the like mistake, the modern and correct practice of preparing the recital of deeds, as bearing *date on or about* &c. should be more generally observed, so that the date may not be conclusively material; and as a consequence, the error may not vitiate the assignment.

Effect of erroneous recital.

The books seem agreed, that an assignment made with reference to an erroneous and positive recital would be void; yet, it is likely that judges of modern times would, from the other certainties, if any, of the lease, to be collected from the names of the parties, the parcels, &c., re-

31. GRANT OF TWO ANNUITIES TO TWO PERSONS; ASSIGNMENT OF LEASEHOLDS TO TRUSTEE FOR SALE, MORTGAGE, &c.

the —— day of ——, and made between [*lessor*], of &c., of the one part, and [*lessee*], of &c., of the other part, the said [*lessor*] did demise, lease, and let unto the said [*lessee*], *All &c. (describe the estate as it is described in the lease): To hold* to the said [*lessee*], his executors, administrators, and assigns, from the —— day of —— then last past, during the term of ninety-nine years: *At* the yearly rent of £—— payable quarterly, on &c. AND WHEREAS (*recite the other lease*) by indenture bearing date on or about &c. AND WHEREAS by virtue of divers mesne assignments, the said indentures of lease, and the premises respectively comprised therein, are now legally vested in the said [*grantor*], for the residue of the said several terms of ninety-nine years, and ninety-nine years therein respectively to come and unexpired. AND WHEREAS the said [*grantees*] have contracted with the said [*grantor*] for the purchase of the several annuities hereinafter mentioned, during the life of him the said [*grantor*], and which annuities, amounting to the yearly sum of £——, are to be issuing out of, and charged and

that premises demised by both leases are vested in grantor of annuity;

of contract for purchase of two annuities by different persons to be charged on leasehold estates;

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ject the erroneous date, and support the assignment. [*Vide ante*, p. 381, *et seq.*] It would not, however, be safe to rely on the liberality of the Courts to interpose against rules of law established by decided cases, and founded on those principles which require that every contract should be proved by the contents of the deed which contains the evidence of the transaction; and an assignment of a lease, assumed to be dated the 1st day of April, cannot be predicated of, or pleaded or given in evidence as an assignment of, a lease dated the 2nd of April. Equity may, on those occasions of sale for a valuable consideration, &c., which give jurisdiction to that Court, correct the mistake; while a Court of law must take it for granted, that there is another lease of the date which is recited. [*Sed vide ante*, p. 381.]

When the recital is correct a subsequent error in referring to the date will not vitiate the deed.

Various distinctions occur on points of this sort. When the recital is correct, or an inaccuracy in the date, &c. is rendered immaterial, then a subsequent error will not vitiate the deeds; for instance, if the lease be recited as bearing date on or about the 2nd day of March, and then the assignment is made by words to this effect,—"All those messuages, &c. which were assigned by the said indenture, bearing date the 4th day of March,"—this error would be immaterial. In the first place, the Courts may reject, as surplusage, the words "on the 4th day of March;" retaining the words, "the said indenture:" and even though the 2nd day of March were not the true date, yet the words *on or about* in the recital, would relieve the case from the difficulty with which it would otherwise be attended, by the admission of the actual lease in evidence; for the actual lease will not be at variance with the recital of the date, since the recital has guarded against the error, or materiality of the recital of the date. 1 Prest. Abst. 60.

31. GRANT OF TWO ANNUITIES TO TWO PERSONS; ASSIGNMENT OF LEASEHOLDS TO TRUSTEE FOR SALE, MORTGAGE, &c.

chargeable upon the premises demised by the said several indentures of lease. AND WHEREAS, for more effectually securing the payment of the said annuities, the said [*grantor*], by his several (*b*) bonds or obligations in writing, bearing even date with these presents, hath become bound to the said [*grantees*], their executors, administrators, and assigns respectively, in the several penal sums therein particularly mentioned: *Conditioned* for the payment to them respectively of their several and respective annuities or yearly sums. AND the said [*grantor*] hath also duly executed two several warrants of attorney, bearing even date with these presents, authorizing and empowering certain attornies therein named to confess two several judgments against him, in her Majesty's Court of Queen's Bench at Westminster, in two several actions of debt, for the several and respective penal sum in the said several bonds or obligations particularly mentioned, with costs, at the several and respective suits of the said [*grantees*]. NOW THIS INDENTURE WITNESSETH, that for and in consideration of the several sums of money, amounting in the whole to the sum of £——— of lawful British money, by the said [*grantees*] to the said [*grantor*] paid, at or before the sealing and delivery of these presents, in the proportions following, that is to say; the sum of £———, part of the said sum of £———, by the said [*grantee*], and the sum of £———, the remainder of the said sum of £———, by the said [*other grantee*], the receipt and payment whereof the said [*grantor*] doth hereby acknowledge; and thereof, and of and from the same, and every part thereof, doth acquit, release, exonerate, and discharge the said [*grantees*], and each of them, and their heirs, executors, administrators, and assigns, for ever, by these presents; *He* the said [*grantor*] by these presents *doth* grant, bargain, sell, and confirm unto the said [*grantee*], his executors, administrators, and assigns, *One* annuity or yearly rent-charge or sum of £——— of lawful British money of Great Britain. *And* unto the said [*other grantee*], his executors, administrators, and assigns, *One* annuity, or yearly rent-charge, or sum of £——— of like lawful money: the said annuities, and each of them, and every part thereof

of distinct bonds to secure each annuity;

of distinct warrants of attorney.

Testatum.

Consideration paid by two to one in moieties.

Grant of two distinct annuities to two persons for grantor's life,

to be severally chargeable on leasehold.

(*b*) See a form in which both of the annuities are included in one bond, *ante*, p. 181.

31. GRANT OF TWO ANNUITIES TO TWO PERSONS; ASSIGNMENT OF LEASEHOLDS TO TRUSTEE FOR SALE, MORTGAGE, &c.

respectively to be severally issuing and payable out of, and charged and chargeable upon ALL THOSE the said several pieces or parcels of ground, messuages or tenements, and premises, in the above-recited indentures, and hereinbefore particularly mentioned and described; and to be respectively paid and payable to the said [*grantee*], and [*other grantee*], and to their several and respective executors, administrators, and assigns, yearly and every year, at or in the common hall of the Bank of England, between the hours of ten and twelve of the clock in the forenoon, by four equal quarterly payments, on &c., without any deduction or abatement whatsoever, the first payment thereof respectively to be made on the ——day of —— next ensuing the date hereof: and a proportional part thereof from the last quarterly payment, or otherwise, from the date of these presents, up to and including the day of the death of him the said [*grantor*]: To HAVE, HOLD (*c*), perceive, and yearly to receive, take, and enjoy the said several annuities or yearly rent-charges unto the said [*grantees*], their several and respective executors, administrators, and assigns, for and during the life of him the said [*grantor*]. AND (*d*) the said [*grantor*] doth hereby also grant unto the said [*grantees*], and each of them, and the executors, administrators, and assigns of them and each of them, that in case the said annuities, or either of them, or any part of them respectively, should happen to be in arrear and unpaid, for the space of thirty days next after or over any of the said days whereon the same are hereinbefore appointed to be paid as aforesaid, *Then* and in such case, and so often as it shall so happen, it shall and may be lawful to and for the said [*grantee*] and [*other grantee*], and each of them, and the executors, administrators, and assigns of them and each of them, from time to time, into and upon all and singular the several pieces or parcels of ground, messuages or tenements, and premises hereinbefore mentioned, and hereby charged with the payment of the said several yearly rent-charges, or into or upon any part or parcel thereof, to enter and distrain; and the distress and distresses then and there found, to take, lead, drive, and carry away and impound, and to detain and keep, until the

Parcels.

Place and time for paying annuities.

Habendum of two distinct annuities to two different persons.

Power of distress on leasehold premises for securing two distinct annuities to two different persons.

(*c*) *Vide ante*, p. 31, (*c*).

(*d*) A power of distress is in this case absolutely requisite, the property being leasehold. *Vide ante*, p. 40.

31. GRANT OF TWO ANNUITIES TO TWO PERSONS; ASSIGNMENT OF LEASEHOLDS TO TRUSTEE FOR SALE, MORTGAGE, &c.

said several annuities, and each of them and all arrears thereof respectively so unpaid, and all costs, charges, and expenses attending the taking and keeping of such distress and distresses, shall be fully paid and satisfied; and in default of payment thereof within five days after the making of any such distress or distresses, to appraise and sell, or cause to be appraised and sold, or otherwise to dispose of such distress or distresses according to law, to the intent that thereby the said [*grantees*], and each of them, and the executors, administrators, and assigns of them and each of them, shall be fully paid and satisfied their said several and respective annuities, and all arrears thereof, and all costs, charges, and expenses to be occasioned by the non-payment or delay of payment thereof, or of any part thereof in any respect whatsoever; AND ALSO that in case the said annuities, or either of them, or any part thereof respectively, should be in arrear and unpaid for the space of forty days next after or over any of the days hereinbefore limited and appointed for the payment thereof, *Then* and so often as it shall so happen, [(although no formal demand thereof shall be made)], it shall and may be lawful to and for the said [*grantees*], and each of them, and the executors, administrators, or assigns of them and each of them, whose annuities or annuity, or any parts or part thereof, shall be so unpaid by the time last mentioned, into and upon all and singular the said pieces or parcels of ground, messuages or tenements, and premises, and into and upon every part thereof, to enter, and the same to have, hold, and enjoy, and the rents, issues, profits, and produce thereof, and of every part and parcel thereof, to have, receive, and take, to his, her, and their own respective use and uses, until he, she, or they shall be thereby and therewith fully paid and satisfied his, her, or their annuity or respective annuities, and all arrears thereof respectively: and also all such arrears of the same, or either of them, as shall become due during such time as they the said [*grantees*], or either of them, or the executors, administrators, or assigns of them or either of them, shall, by virtue of such entry or entries, be, or continue in the possession of the said premises; *together* with all costs, charges, damages, and expenses whatsoever, which shall be occasioned by reason of the non-payment or detention of the same, or either of them, or any part thereof respectively; and such possession, when taken, to be without impeachment of waste; AND

Power of entry on leasehold premises on default in paying either of two distinct annuities granted to two different persons.

Further testatum.

31. GRANT OF TWO ANNUITIES TO TWO PERSONS; ASSIGNMENT OF LEASEHOLDS TO TRUSTEE FOR SALE, MORTGAGE, &c.

THIS INDENTURE FURTHER WITNESSETH, that for the further and better securing the said annuities or yearly rent-charges, and for the other purposes hereinafter mentioned, He the said [*grantor*], for the considerations aforesaid, and in consideration of the sum of five shillings, to him already paid by the said [*trustee*], the receipt whereof is hereby acknowledged, *doth* by these presents, grant, bargain, sell, assign (*e*), and set over unto the said [*trustee*], his executors, administrators, and assigns, ALL THOSE the said several pieces or parcels of ground, and the several messuages or tenements thereon erected and built, and hereinbefore particularly mentioned and described; AND all the estate, right, title, interest, term of years yet to come and unexpired, property, claim, and demand whatsoever of him the said [*grantor*], of, in, and to the same and every part thereof. TO HAVE AND TO HOLD the said several pieces or parcels of ground, messuages or tenements, erections and buildings, and all and singular other the premises hereby bargained, sold, and assigned, or expressed and intended so to be, with their and every of their appurtenances, unto the said [*trustee*], his executors, administrators, and assigns, for and during all the rest, residue, and remainder of the said several terms of ninety-nine years, and ninety-nine years, in and by the said indentures of lease granted respectively, and now to come and unexpired: *together* with the said indentures of lease, and all mesne assignments thereout; *But nevertheless upon the trusts*, and to and for the ends, intents, and purposes hereinafter mentioned, expressed, and declared of and concerning the same; that is so say; UPON TRUST, and to and for the intent and purpose, that in case the annuities or yearly sums hereby granted or intended so to be, or either of them or any part of them respectively, should be in arrear and unpaid for the space of sixty days, next over or after any of the days hereinbefore appointed for payment thereof, *Then*, and so often as it shall so happen, the said [*trustee*], his executors, administrators, or assigns, shall and may enter upon the said several pieces or parcels of ground, messuages or tenements, and premises,

Assignment from grantor to trustee.

Habendum for residues of terms.

Upon trust.

If either annuity be in arrear sixty days, to pay it, with costs, out of rents, or by sale or mortgage.

(*e*) [As to the liabilities of assignees of leases, *vide infra*, Vol. 5, p. 429; Vol. 4, p. 420, 429; and as to the relative advantages of securities on leaseholds, by underlease and by assignment, *vide infra*, Vol. 5, p. 508.]

As to securities by underlease or assignment.

1. GRANT OF TWO ANNUITIES TO TWO PERSONS; ASSIGNMENT OF LEASEHOLDS TO TRUSTEE FOR SALE, MORTGAGE, &c.

and by and out of the yearly and other rents, issues, and profits thereof; or by sale or mortgage (with or without power of sale) of the said premises, or any part thereof, for and during the remainder of the said several terms of ninety-nine years and ninety-nine years; or by all or any of the ways and means aforesaid, or by such other ways and means as the said [*trustee*], his executors, administrators, or assigns, shall think fit, raise and levy such sum and sums of money as shall be sufficient to satisfy unto the said [*grantees*] respectively, and their respective executors, administrators, and assigns, their said several annuities or yearly sums, or so much thereof respectively as shall from time to time happen to be in arrear and unpaid as aforesaid: and all such costs, charges, and expenses as the said [*trustee*], his executors, administrators, or assigns, or the said [*grantees*] or either of them, or the executors or administrators of them or either of them, shall sustain, pay, expend, or be put unto, for or by reason or means of the non-payment or detention of the same, on the days and times, and in manner before appointed for payment thereof; and also all such costs, charges, and expenses as he the said [*trustee*], his executors, administrators, or assigns, shall be put to, in or about the execution of the trusts aforesaid: AND from and after full payment and satisfaction of the said annuities, and each of them, and all such costs, charges, and expenses as aforesaid; *And* in the meantime, and until default shall happen to be made in payment of the same annuities, or either of them, or any parts or part of them, or either of them, UPON TRUST to permit and suffer the said [*grantor*], his executors, administrators, or assigns, to possess and enjoy the said several pieces or parcels of ground, messuages or tenements, and premises, with their appurtenances; and to receive and take the rents, issues, and profits thereof, and of every part thereof, to his and their own use and benefit. AND *it is hereby agreed and declared*, that it shall and may be lawful to and for the said [*trustee*], his executors, administrators, and assigns, from time to time, and at all times hereafter, by, with, and out of the rents and profits of the said several premises, to repair, uphold, sustain, and keep, all and every the said messuages or tenements and premises, in, by, and with all and all manner of needful and necessary reparations and amendments whatsoever, when, where, and so often as need or occasion shall be or require: AND ALSO

After satisfaction, or until default, to permit grantor to receive rents.

Trustee, out of rents, may repair:

trustee may in-

31. GRANT OF TWO ANNUITIES TO TWO PERSONS; ASSIGNMENT OF LEASEHOLDS TO TRUSTEE FOR SALE, MORTGAGE, &c.

to insure such sum or sums of money, as he or they shall think fit, on the said several messuages or tenements and premises, or any part or parcel thereof, in any of the public offices for insuring houses against fire: AND in case the said several messuages or tenements and premises, or any of them, should be burnt down, damaged, or injured by fire, that the money which shall or may be recovered by virtue of such insurance shall be laid out and expended in and towards the repairing, building, and making good the damage done to the said several messuages or tenements and premises or any part thereof; and the said money shall not be used for, or converted to, any other purpose whatsoever: AND FURTHER, that in case default should happen to be made in payment of the said several annuities or yearly sums, or either of them, on the days and times hereinbefore mentioned, for payment thereof respectively, and the same or any part thereof should be in arrear for the space of twelve calendar months next after any of the said days respectively, being lawfully demanded at any time after the expiration of the said twelve calendar months, and not paid when demanded; it shall and may be lawful to and for the said [*trustee*], his executors, administrators, or assigns, to sell and dispose of the said several pieces or parcels of ground, messuages or tenements, and premises; *And* out of the monies which shall be raised by such sale or sales, in the first place pay and satisfy unto the said [*grantee*], and [*other grantee*], and their executors, administrators, and assigns, the sum of £——, by them advanced to the said [*grantor*] as aforesaid, to be equally divided between them, together with all arrears of the said annuities, to them granted as aforesaid, which shall or may be then due and owing; and all costs and charges in respect thereof (*g*);

sure premises in any sum:

money to be recovered under policy to be expended in rebuilding premises:

if either annuity be in arrear twelve months, trustee may sell leaseholds;

and repay consideration-monies, arrears, and costs,

(*g*) [J. In the opinion of some persons, a trust of this nature for securing to the grantee of an annuity the return of his consideration-money, renders the transaction (assuming the annuity to be more than five per cent. on the purchase-money) usurious. An absolute trust, under which the consideration-money would be payable at a given event or period, free from all hazard or contingency, would, it is conceived, be exposed to this objection; but it will be perceived that not only in this case may the grantor, by the punctual payment of the annuity, prevent the trust for sale from coming into operation, but it is also liable to be defeated by the determination of the annuity on the decease of the persons for whose lives it is granted. This contingency

Whether a trust to repay grantee his consideration is liable to objection on the ground of usury.

31. GRANT OF TWO ANNUITIES TO TWO PERSONS; ASSIGNMENT OF LEASEHOLDS TO TRUSTEE FOR SALE, MORTGAGE, &c.

And after payment thereof, and of all such costs, charges, and expenses, as the said [*trustee*], his executors, administrators, or assigns, may be put unto, or bear, pay, or expend, in or about the execution of the said trusts, then UPON TRUST to pay the residue of such purchase-money which shall then remain (if any) unto the said [*grantor*], his executors, administrators, or assigns: AND then, and in such case, the annuities or yearly sums hereby granted shall cease and determine; and these presents (*h*), and also the said bond, shall be delivered up to be cancelled, and satisfaction on the said judgment shall be duly acknowledged on record; anything hereinbefore contained to the contrary thereof in anywise notwithstanding. AND *it is hereby agreed and declared*, that such sums of money as shall be raised under the trusts hereinbefore declared, for the purpose of paying and satisfying the said two several annuities or yearly sums of £——, and such costs, charges, and expenses as aforesaid, shall be payable and paid to them the said [*grantee*] and [*other grantee*] respectively, or to their respective executors, administrators, or assigns, without any priority or preference of either of them, his executors, administrators, or assigns, to the other of them, his executors, administrators, or assigns. AND *it is hereby further agreed and declared*, that the payment of the whole or any part of the purchase or mortgage money, or of the rents and profits of the premises hereby or intended to be hereby assigned as

and pay residue to grantor:

upon repayment of consideration, &c. annuities to cease, assignment and bond to be cancelled, and satisfaction acknowledged on judgment.

Monies raised for paying both annuities to be paid without priority.

Trustee's receipts to be sufficient discharges.

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clearly takes the case out of the principle in question, and, in truth, constitutes the great distinction between a loan at interest and an annuity. It seems desirable to make the money by the terms of the trust payable only in the event of the annuity being undetermined at the time of its application. The trust in the text should then receive the following alteration :—

"By and out of the monies, &c. in the first place, pay and satisfy unto the said [*grantee*] and [*other grantee*], their executors, administrators, or assigns, all arrears of the annuities to them granted as aforesaid, and all costs and charges in respect thereof. And also, *in case the said annuities shall be then subsisting and undetermined*, pay and satisfy unto the said [*grantees*], their executors, administrators, or assigns, the sum of £——, as and for the repurchase or redemption of the same, to be equally divided between them," &c.J.]

(*h*) *Vide ante*, p. 28.

aforesaid, or any part thereof, unto the said [*trustee*], his executors, administrators, or assigns, by the purchaser or purchasers, mortgagee or mortgagees, or tenant or tenants, of the said premises, or any part thereof, shall be and be deemed a good and effectual payment thereof: *And* that the receipt or receipts of the said [*trustee*], his executors, administrators, or assigns, for such purchase or mortgage money, or for such rents and profits, or any part thereof respectively, shall be a good and sufficient receipt, release, and discharge, or good and sufficient receipts, releases, and discharges, to the person or persons paying the same, or for so much thereof as in such receipt or receipts shall be expressed and acknowledged to be received: *And* that such purchaser or purchasers, mortgagee or mortgagees, tenant or tenants, shall not be under the necessity of seeing the money which he or they shall pay to the said [*trustee*], his executors, administrators, or assigns, applied for the purposes aforesaid; nor be in anywise answerable or accountable for the misapplication or non-application thereof; nor be obliged to inquire into the reason or necessity of such sale or mortgage, or of the receipt of such rents and profits by the said [*trustee*], his executors, administrators, or assigns. AND THE SAID [*grantor*] doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with each of them the said [*grantees*], and the executors, administrators, and assigns of each of them (*i*), that he the said [*grantor*], his heirs, executors, or administrators, will or shall well and truly pay, or cause to be paid, unto

31. GRANT OF TWO ANNUITIES TO TWO PERSONS; ASSIGNMENT OF LEASEHOLDS TO TRUSTEE FOR SALE, MORTGAGE, &c.

Indemnity to purchasers, &c.

Covenant by grantor to pay annuities.

(*i*) [By indenture, reciting that T. and R. had contracted with L. and B. for the sale to them of an annuity of £30, to be secured and payable to them as thereinafter mentioned, in consideration of £300 paid by L. and B., the said T. and R. severally covenanted with L. and B., their heirs, executors, and administrators, to pay, during certain lives, to L. and B., their executors, &c., *one annuity of* £30, *in the shares and proportions following*, that is to say; the sum of £15, being one moiety of the said annuity, unto L., his executors, &c.; and the sum of £15, the remaining moiety, to B., his executors, &c.:—the first payment of the *said annuity* to be made &c. There was also a proviso for paying a proportional part of the *said annuity*, and all the powers and securities in the deed were given to the grantees jointly. It was held that the deed conferred upon the grantees a joint interest in one annuity, and consequently that one of them could not sue alone upon the covenant. *Lane* v. *Drinkwater*, 1 Cr. M. & R. 599. See *Withers* v. *Bircham*: *Petrie* v. *Bury*, stated *ante*, Vol. 1, p. 688.]

Covenant to pay annuities construed as a joint covenant.

31. GRANT OF TWO ANNUITIES TO TWO PERSONS; ASSIGNMENT OF LEASEHOLDS TO TRUSTEE FOR SALE, MORTGAGE, &c.

each of them the said [*grantee*], and [*other grantee*], respectively, and to their respective executors, administrators, or assigns, for and during the life of him the said [*grantor*], the annuity or yearly sum of £—— hereinbefore granted to each of them the said [*grantees*] respectively, and to their respective executors, administrators, and assigns, and also such proportional part thereof as aforesaid, free from taxes, and clear of all other deductions whatsoever, at the days and times and in manner and form hereinbefore limited and appointed for payment thereof: AND ALSO that he the said [*grantor*] now hath in himself good right, full power, and lawful and absolute authority by these presents, to charge all and singular the said several pieces or parcels of ground, messuages or tenements, and premises, and every part and parcel thereof, with the payment of the said annuity or yearly sum, in manner aforesaid. AND THE SAID [*grantor*], for himself, his executors and administrators, doth by these presents covenant and agree with the said [*trustee*], his executors, administrators, and assigns, (*for Title, &c., ut ante*, p. 278): AND that he the said *grantor*], his executors or administrators, will or shall, from time to time, and at all times hereafter, at his or their own costs and charges, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful act and acts, thing and things, conveyances and assurances in the law, for the further, better, and more perfectly assigning and assuring the said several pieces or parcels of ground, messuages, or tenements, and premises, unto the said [*trustee*], his executors, administrators, and assigns, for the rest, residue, and remainder, which shall be to come and unexpired, of and in the said several terms of ninety-nine years and ninety-nine years therein respectively granted by the above in part recited indentures; upon the trusts, and to and for the ends, intents, and purposes, hereinbefore mentioned; *As* by the said [*trustee*], his executors, administrators, or assigns, or his or their counsel, shall be reasonably advised or devised and required (*k*). PROVIDED ALWAYS, that the respective judg-

And that he hath power to charge leaseholds.

Covenant with trustee for title, &c. and further assurance.

Defeazance on

Trustees entitled to covenant from grantor and grantee, for indemnity against rents and covenants.

(*k*) As a trustee to whom a leasehold estate is assigned upon trusts for securing an annuity, has no beneficial interest in the premises, the assignment being made to him for the benefit of the grantees and the grantor, he appears to be entitled to a covenant from them for indemnity against the rents and covenants of the leases; however, the grantor

ments so to be entered up against the said [*grantor*], at the suit of each of them the said [*grantees*] respectively as afore-

31. GRANT OF TWO ANNUITIES TO TWO PERSONS; ASSIGNMENT OF LEASEHOLDS TO TRUSTEE FOR SALE, MORTGAGE, &c.

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alone usually covenants for this purpose, *ut ante*, p. 281; but if both the grantor and grantee join in the covenant, it may be as follows:

"AND THE SAID* [*grantor*] and [*grantees*] do hereby, for themselves, their heirs, executors, and administrators, jointly; *and* any two† of them, separately and apart from the other of them, do hereby, for themselves, their heirs, executors, and administrators, jointly; *and* each of them separately and apart from the others and other of them, doth hereby, for himself, his heirs, executors, and administrators, severally covenant and agree with the said [*trustee*], his executors, administrators, and assigns, that they the said [*grantor*] and [*grantees*], or some or one of them, or the heirs, executors, or administrators of them or some or one of them, will or shall from time to time, and at all times hereafter, at the proper costs and charges of them or him, or some or one of them, protect, defend, and save harmless, and keep indemnified the said [*trustee*], his heirs, executors, and administrators, and his and their lands and tenements, goods, chattels, and effects, from and against the payment of the rents and performance of the covenants reserved and contained in the above in part recited indentures of lease, or either of them respectively, to be paid and performed by the respective lessees, their executors, administrators, and assigns, for or in respect of the premises thereby respectively demised; *And also* from and against all costs, losses, damages, claims, and demands whatsoever which he or they shall or may incur, bear, pay, suffer, sustain, or lay out, for or by reason or means, or on account of the same rents or covenants: *And also* from and against all

two several judgments.

Joint and several covenants from grantor and grantees, indemnify trustee from rents and covenants.

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* If there be only one grantee, the covenant may be—

"AND THE SAID [*grantor*] and [*grantee*] do hereby, for themselves, their heirs, executors, and administrators; *and* each of them doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [*trustee*], his heirs, executors, and administrators, that they the said [*grantor*] and [*grantee*], or one of them, or the heirs, executors, or administrators of them or one of them, will or shall" &c. *ut supra*..

Covenant to indemnify trustee from rents and covenants in leases.

† *Vide ante*, Vol. 1, p. 688.

31. GRANT OF TWO ANNUITIES TO TWO PERSONS; ASSIGNMENT OF LEASEHOLDS TO TRUSTEE FOR SALE, MORTGAGE, &c.

said, shall be considered as a security only, for better and more effectually securing the payment of the annuity or yearly sum of £—— hereinbefore granted to each of them the said [*grantees*] respectively, and to their respective executors, administrators, and assigns, during the life of him the said [*grantor*], at the several days and times, and in the manner hereinbefore limited and appointed for payment thereof respectively, and of such proportional part thereof as aforesaid: AND that no execution or executions shall be issued or taken out upon either of the said judgments, unless and until the whole or a part of some quarterly payment of the annuity, intended to be thereby more effectually secured, shall be in arrear for twenty-one days next after some or one of the days or times hereinbefore limited and appointed for payment thereof as aforesaid: AND when and so often as either of the said annuities, or any part thereof, or such proportional part thereof as aforesaid, shall be in arrear, and unpaid for the space of twenty-one days next after any of the days or times hereinbefore limited and appointed for payment thereof, it shall and may be lawful to and for such of them the said [*grantees*] respectively, and their respective executors, administrators, and assigns, whose annuity or annuities shall be in arrear, to sue out such execution or executions upon or by virtue of the said respective judgments as he or they shall think fit or be advised, for the recovery of the arrears of such annuity or respective annuities, and every part thereof; and all costs and charges which the said [*grantees*] respectively, and their respective executors, administrators, or assigns, or any of them, shall bear, pay, sustain, or be put unto, for or by reason or means of the non-payment thereof: AND that it shall not be necessary for the said [*grantees*] respectively, or their respective executors, administrators, or assigns, to revive or cause the said respective judgments to be revived, or do any act, matter, or thing, to keep the same on foot, notwithstanding the said judgments respectively shall have been entered on re-

When either annuity shall be in arrear, execution to be sued on judgment:

that it shall not be necessary for either grantee to revive his judgment.

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actions at law and suits in equity, which at any time or times, or from time to time hereafter, shall be brought, commenced, or prosecuted against him the said [*trustee*], his heirs, executors, or administrators, for or on account of the said rents or covenants."

31. GRANT OF TWO ANNUITIES TO TWO PERSONS; ASSIGNMENT OF LEASEHOLDS TO TRUSTEE FOR SALE, MORTGAGE, &c.

cord for the space of one year or upwards, and notwithstanding any rule or practice of the said Court of Queen's Bench to the contrary: AND that the said [*grantor*], his heirs, executors, or administrators, will not nor shall have, take, receive, or attempt, by any ways or means, to have or receive any advantage in consequence of not reviving or keeping the said judgments respectively on foot. PROVIDED ALWAYS, that from and after the decease of the said [*grantor*], and full payment of all arrears of the said several annuities, and such proportional part thereof as aforesaid, and all such costs, charges, damages, and expenses as aforesaid, and all other costs, charges, damages, and expenses in anywise relating to the said respective judgments and premises, they the said [*grantees*] respectively, or their respective executors, administrators, or assigns, will or shall, upon the request and at the costs and charges of the heirs, executors, administrators, or assigns of him the said [*grantor*], acknowledge satisfaction of the said respective judgments upon the record thereof: *And* then, &c. (*trustee to resign, ut post*, p. 302). PROVIDED ALWAYS, that in case the said [*grantor*], his heirs, executors, administrators, or assigns, should at any time hereafter be minded and desirous of repurchasing the said several annuities, and of such his or their intention should give unto the said [*grantees*] respectively, their respective executors, administrators, or assigns, ten days' notice in writing, that they the said [*grantees*] respectively, their respective executors, administrators, or assigns, will or shall, at the end of the said ten days from the time such notice shall be given as aforesaid, on receiving all and every sums and sum of money whatsoever, then due for the arrears of the said several annuities, together with proportional parts thereof respectively, from the last day of payment thereof preceding such repurchase, or otherwise from the date of these presents, if such repurchase should be made before any quarterly payment thereof shall become due, up to and including the day of repurchasing the same, accept, receive, and take the sum of £——, in equal shares and proportions, as and in full for the repurchase of the same several annuities: *And* on receipt of the said sum of £——, and all arrears of the said several annuities, and such proportional part thereof as aforesaid, will or shall respectively, at the proper costs and charges in the law of him the said [*grantor*], his heirs, executors, administrators, or as-

On death of grantor and payment of arrears and costs, satisfaction to be acknowledged on judgments.

Power to repurchase annuities on ten days' notice, and paying original purchase-money and half a year's payment on each of the annuities in advance, with a proportional part.

On repurchase, bonds to be cancelled;

31. GRANT OF TWO ANNUITIES TO TWO PERSONS; ASSIGNMENT OF LEASEHOLDS TO TRUSTEE FOR SALE, MORTGAGE, &c.

signs, deliver each of the said two several bonds to the said [*grantor*], his heirs, executors, administrators, or assigns, to be cancelled; *And* respectively acknowledge, or cause to be acknowledged, satisfaction on the records of the respective judgments which shall be entered by virtue of each of the said several warrants of attorney: *And* then and in such case the said several annuities, and the trusts, powers, and remedies herein contained for securing the payment thereof, shall cease, determine, and be void; *And* then and in such case the said [*trustee*], his executors, administrators, or assigns, will or shall, at the request, costs, and charges of the said [*grantor*], his executors, administrators, or assigns, assign and convey the said several pieces or parcels of ground, messuages or tenements, and premises, or so much and such part of them as shall not have been sold and disposed of under the trusts hereinbefore contained, unto the said [*grantor*], his executors, administrators, or assigns, or as he or they shall direct or appoint. IN WITNESS &c.

satisfaction acknowledged on judgment;

annuities and remedies to cease;

and trustee to re-assign.

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32. GRANT BY ASSIGNMENT OF ANNUITIES BY HUSBAND AND WIFE.

32. GRANT, *by* ASSIGNMENT *of Three Annuities to a Trustee; the first being settled for the separate use of the Grantor's Wife, she appoints the same under a Power to a Trustee; the second being settled on the Grantor and his Wife; and the last being payable to the Wife if she survive the Grantor* (*a*); UPON TRUST, *to pay an Annuity previously granted by them; and subject thereto to pay the present Grantee an Annuity during the Wife's Life:* DEFEAZANCE *to Warrant of Attorney; Husband or Wife may* REPURCHASE *the Annuity, or any Part not less than a fifteenth, at a fixed Sum.*

Parties.

THIS INDENTURE, made &c., BETWEEN [*grantor*], of &c., and [*wife*] his wife, (who before her marriage with the said [*grantor*] was the wife, and afterwards the widow and relict of [*testator*], late of ——, deceased), of the first part;

(*a*) *Vide infra*, p. 307, (*f*).

[*grantee*], of &c., of the second part; and [*trustee*], of &c., of the third part. WHEREAS the said [*testator*], deceased, being then and thenceforth to the time of his decease, seised, possessed of, or entitled to divers freehold, copyhold, and leasehold estates, and also considerable Bank Annuities and other funds, securities, and personal estate, by his last will and testament, bearing date &c., did (amongst other things) bequeath to the said [*wife*], then his wife, and afterwards his widow and relict, in lieu of her settlement if she survived him, during her natural life, his leasehold house in —— aforesaid: *And* to enable her to live comfortably therein, he willed that his executors thereafter named should pay her, out of the whole produce of his estate, the yearly sum of £——; the first quarterly payment to be due on the day of his decease, and so on quarterly during her life: *And* the said testator did appoint [*executor*], (his son and residuary devisee), and [*other executor*], and the said [*wife, widow name*], executors of his said will: AND WHEREAS the said [*testator*] departed this life in or about the month of ——, and the said [*executors*], and [*wife, widow name*], duly proved his said will soon after his decease, in the Prerogative Court of the Archbishop of Canterbury. AND WHEREAS the said [*wife, widow name*] made her election to take under the will of the said [*testator*], deceased, and to accept the gifts and bequests in her favour contained in the said will, in lieu of, and as a satisfaction for, the provision made and provided for her by an indenture, bearing date &c., being the settlement referred to by the said will of the said testator. AND WHEREAS, by indenture bearing date &c., and made between the said [*executor*], of the first part; the said [*wife*], by her then name of [*widow name*], of the second part; the said [*executor*] (the son), of the third part; and [*trustee*], of &c., of the fourth part; the messuages and other hereditaments, stocks, funds, securities, and other personal estate and effects therein mentioned, and then late belonging to the said testator, were conveyed and assigned respectively to the said [*executor, son*] (the son), and [*trustee*], *Upon trust*, during the life of the said [*wife, widow name*], by and out of the rents, issues, and profits, interest, dividends, and annual produce of the said real and personal estate, to pay to the said [*wife, widow name*], and her assigns, during her life, an annuity of £——, by quarterly payments, in manner therein mentioned. AND WHEREAS, by indenture bearing date &c.

32. GRANT BY ASSIGNMENT OF ANNUITIES BY HUSBAND AND WIFE.

Recital of bequest of annuity, &c. to grantor's wife by her former husband, in lieu of the provision in her marriage settlement;

annuity to be paid out of testator's real and personal estate;

appointment of executors:

death of testator:

proof of will.

Election of widow to take the bequests in lieu of the provision by settlement;

of conveyance of testator's real and personal estate to trustees, in trust thereout to pay his widow the annuity for her life;

of settlement on marriage of

32. GRANT BY ASSIGNMENT OF ANNUITIES BY HUSBAND AND WIFE.

widow with grantor, whereby her annuity was vested in trustees, in trust, as to part, as she should appoint, and in default of appointment, to her separate use; the remaining part to be paid to husband and wife; on the decease of husband, the whole to be paid to wife.

and made between said [*wife, widow name*], of the first part; [*grantor*], of the second part; [*two trustees*], of &c., of the third part; and the said [*executor*] (the son), and [*trustee*] of the fourth part; in consideration of a marriage then intended, and shortly afterwards had and solemnized between the said [*grantor*] and [*wife, married name*], then [*widow name*], and for other considerations, the said [*wife, widow name*], did grant, bargain, sell, and assign unto the said [*two trustees*], their executors, administrators, and assigns, *The* said annuity of £——, payable to her the said [*wife, widow name*], and her assigns, during her life, as hereinbefore is mentioned: *To hold* the same unto the said [*two trustees*], their executors, administrators, and assigns, during the joint lives of the said [*wife, widow name*], and [*grantor*], *In trust* for the said [*wife, widow name*], until the said then intended marriage between her the said [*wife, widow name*] and [*grantor*] should take effect; *And* after the solemnization thereof, then *Upon trust*, that they the said [*two trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, should receive the said annuity of £——, as the same should from time to time grow due: *And* thereout, in the first place, from time to time, during the joint lives of the said [*wife, widow name*] and [*grantor*], pay into the hands of the said [*wife, widow name*], for her own sole and separate use and benefit; or to such person or persons as she by writing signed with her proper hand should, notwithstanding her said then intended coverture, from time to time direct or appoint, the clear annual sum of £——: *And* her receipts alone, or the receipts of such person or persons as she should appoint to receive the same, should be good discharges for the same, or so much thereof as in such receipts should be expressed or acknowledged to be received: *And upon further trust*, that the said [*two trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, should pay to the said [*grantor*] and [*wife, widow name*], his then intended wife, the remainder of the said annuity of £——, after payment of the said annual sum of £——: *And* it was by the indenture now in recital declared, that after the death of the said [*grantor*], the estate of the said [*two trustees*], their executors, administrators, and assigns, and the trusts thereby created, should immediately cease and determine; and the said annuity of —— should thenceforth go, and be

32. GRANT BY ASSIGNMENT OF ANNUITIES BY HUSBAND AND WIFE.

wholly paid and payable to the said [*wife, married name*], during the term of her natural life: *And* in the same indenture is contained a proviso, that in case the said [*two trustees*], or either of them, should happen to die before the trusts of the said indenture should be fully performed, or should be desirous of being discharged from, or refuse, decline, or become incapable to act in the execution of the said trusts, then it should be lawful for the said [*grantor*] and [*wife, widow name*], his then intended wife, to nominate one or more trustee or trustees in the place or stead of him or them so dying, desirous of being discharged from, or refusing, declining, or becoming incapable to act in the trusts aforesaid.

of power in settlement to appoint new trustees;

AND WHEREAS the said [*two trustees*] having declined to act in the trusts created by the lastly hereinbefore recited indenture, the said [*grantor*], and [*Christian name*], his wife, did nominate and appoint [*new trustee*], of &c., a trustee in the place of said [*old trustee*]; and [*other new trustee*], of &c., a trustee in the place of said [*other old trustee*]; and proper deeds were executed for that purpose.

that trustees of settlement having declined to act, husband and wife appointed new trustees in their stead;

AND WHEREAS the said [*grantor*] and [*wife*], his wife, some time since granted an annuity of £—— to [*annuitant*], of &c., payable during the life of her the said [*wife*], and charged the same on the annuity or annuities to which they are so respectively entitled as hereinbefore is mentioned.

that husband and wife previously granted an annuity during wife's life, charged on the annuities before mentioned;

AND WHEREAS the said [*other new trustee*] having declined to act in the said trusts, the said [*annuitant*] hath been duly nominated and appointed a trustee in the place of the said [*other new trustee*]; and proper deeds have been executed for that purpose.

that one of the trustees having declined to act, annuitant was appointed in his stead:

AND WHEREAS the said [*new trustee*] hath lately departed this life, and no new trustee hath yet been appointed in his place, whereby the said [*annuitant*] hath become the surviving trustee for executing the trusts created by the lastly hereinbefore recited indenture.

death of other trustee and no appointment in his stead:

AND WHEREAS the said [*grantor*] and [*wife*] his wife have contracted with the said [*grantee*], for the absolute sale to him the said [*grantee*] of an annuity of £——, to be paid to the said [*grantee*], his executors, administrators, and assigns, during the life of the said [*wife, married name*], and to be secured as hereinafter is mentioned, at the price of £——, but subject to be repurchased as hereinafter is mentioned.

contract for sale of annuity;

AND WHEREAS in pursuance of the said agreement on the part of the said [*grantee*], he hath this day paid the sum of £—— to the said [*grantor*], at the request and by the direction of the said [*wife, mar-*

payment of consideration.

32. GRANT BY ASSIGNMENT OF ANNUITIES BY HUSBAND AND WIFE.

Recital of warrant of attorney.

ried name], testified by her executing these presents: AND WHEREAS in pursuance of the said agreement on the part of the said [*grantor*], he the said [*grantor*] hath this day executed a deed-poll, or warrant of attorney, bearing even date with these presents, authorizing certain attornies therein named to confess a judgment against him in her Majesty's Court of —— at Westminster, in an action of debt, for the sum of [*double the purchase-money*], for money borrowed, at the suit of the said [*grantee*], his executors or administrators, and costs of the suit (*b*). NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the said sum of £—— so by the said [*grantee*] to the said [*grantor*] paid as hereinbefore is mentioned, the receipt whereof they the said [*grantor*] and [*wife*] his wife do hereby respectively acknowledge, and of and from the same, and every part thereof, do respectively acquit, release, and discharge the said [*grantee*], his executors, administrators, and assigns; *She* the said [*wife*], by virtue and in exercise of the power or authority to her for this purpose given or reserved in and by the hereinbefore in part recited indenture, of the —— day of ——, and all other powers or authorities to her given, limited, or reserved, in her vested, or in anywise enabling her in this behalf, *doth* by this writing direct and appoint that the said [*annuitant*], his executors, administrators, and assigns, and such other trustee or trustees as shall or may hereafter be nominated and appointed by the said [*grantor*] and [*wife*] his wife, or either of them, in pursuance of the power for that purpose contained in the said indenture of the —— day of ——, shall at all times, during the joint lives of the said [*grantor*] and [*wife*], his wife, pay the said annual sum of £——, and all arrears and future payments which, from the day of the date of these presents, shall become due and payable in respect thereof, when and as the same shall be respectively had and received (deducting the costs and charges which they or he may be put to in

Testatum.

Appointment by grantor's wife of annuity of £—— during their joint lives, to trustee.

When grantor has no real estates, sometimes judgment is not entered up.

(*b*) In the above instance, the grantor having no real estates, it was thought advisable not to enter up judgment, as the covenant for payment of the annuity being under seal, becomes a debt by specialty or special contract, which is classed next after debts of record, and takes precedence of simple contract debts. 2 Bla. Com. 465, 511. *Sed vide* 3 Geo. 4, c. 39, *post*. [And *ante*, Vol. 1, p. 109 (*a*).]

receiving the same), unto the said [*trustee for securing annuity*], his executors, administrators, and assigns, *Upon the trusts* and for the intents and purposes hereinafter expressed and contained of and concerning the same. AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance of the said agreement, and for the considerations aforesaid, *They* the said [*grantor*] and [*wife*] his wife, by these presents *do*, and each of them *doth* grant, bargain, sell, and assign unto the said [*trustee for securing annuity*], his executors, administrators, and assigns, ALL THAT the said annual sum of £—— (being the residue of the annual sum of £——, after deducting thereout the said annual sum of £—— appropriated to the separate use of the said [*wife*], as hereinbefore is mentioned); *And* the arrears and future payments to become due of the said annuity of £——, from the day of the date of these presents: AND all powers and remedies for recovering and enforcing payment of the said annual sum of £——: *Together* with full power and authority to ask, demand, sue for, recover, receive, and give effectual receipts and discharges for the said annuity of £——, and every part thereof: AND all the right, title, property, claim, and demand whatsoever of them the said [*grantor*] and [*wife*] his wife, and each of them, both at law and in equity, of, in, to, from, or out of the premises hereinbefore assigned or expressed and intended so to be, and every of them; TO HAVE, hold, receive, and take the said annuity of £——, and all and singular other the premises and every part thereof, unto the said [*trustee*], his executors, administrators, and assigns, *Upon the trusts*, and for the intents, and purposes hereinafter expressed and contained of and concerning the same. [AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance of the said agreement, and for the considerations aforesaid, they the said [*grantor*] and [*wife*] his wife, by these presents *do*, and each of them *doth* grant, bargain, sell, and assign unto the said [*trustee*], his executors, administrators, and assigns, ALL THAT the said annuity or yearly sum of £——, which the said [*wife*], in case she should survive the said [*grantor*] (*c*), will become enti-

32. GRANT BY ASSIGNMENT OF ANNUITIES BY HUSBAND AND WIFE.

Second testatum.

Assignment by grantor and his wife to trustee of

annuity to which they were entitled during their joint lives.

All powers, &c.

All the right, &c.

Habendum, upon the trusts hereinafter declared.

[*Third testatum.*

Assignment by grantor and his wife, to trustee of

annuity to which wife will become entitled if she survive husband.

(*c*) The above deed was perused, settled, and approved by one of the most eminent conveyancers now living, "as calculated to make the

32. GRANT BY ASSIGNMENT OF ANNUITIES BY HUSBAND AND WIFE.

tled to receive for the term of her life, as aforesaid: AND all powers and remedies for recovering and compelling payment of the said annuity of £——; *Together* with full power and authority to ask, demand, sue for, recover, receive, and give effectual receipts and discharges for the said annuity of £——, (in case the same should become payable), and every part thereof: AND all the estate, right, title, interest, property, claim, and demand whatsoever of them the said [*grantor*], and [*wife*] his wife, and each of them, both at law and in equity, of, in, to, from, or out of the said annuity of £——, and every part thereof. TO HAVE, hold, receive, and take the said annuity of £——, and all and singular other the premises lastly hereinbefore assigned or expressed, and intended so to be, and every of them, and every part thereof, unto the said [*trustee*], his executors, administrators, and assigns, *Upon the trusts*, and for the intents and purposes hereinafter expressed and contained of and concerning the same;] AND *it is hereby agreed and declared*, that the said [*trustee*], his executors, administrators, and assigns, shall stand and be possessed of, and interested in, the said several annuities of £——, [£——,] and £——; UPON TRUST, that he the said [*trustee*], his executors, administrators, and assigns, in the first place, shall, at all times during the joint lives of the said [*grantor*] and [*wife*] his wife, by and out of the said annual sums of £——, and £—— respectively, [and in case the said [*wife*] should survive the said [*grantor*], then after the decease of the said [*grantor*], in the lifetime of the said [*wife*], during the life of the said [*wife*], by and out of the said annuity or yearly sum of £——, to which the said [*wife*] will, in the event of her surviving the

All powers, &c.

(*Sed quære* their power to assign this contingent interest).

All the estate, &c.

Habendum, upon trusts hereinafter declared.]

Declaration that trustee shall stand possessed of annuities.

Upon trust, in first place, during joint lives of grantor and his wife, out of annuities of £——, and £——, [and after death of wife in grantor's lifetime, out of annuity of £——, to

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best security which the nature of the property admits for the proposed annuity."

As to alienation of a wife's reversionary property.

However, the third *testatum* cannot be followed as a precedent: for it is determined in equity that where a woman stipulates, in the event of *surviving her husband*, that her personal property shall become her own, reserving no power of disposition over it during the marriage; neither her husband can dispose of it by sale or otherwise, nor can she do so during his life, either by deed, will, consent, or charge. And the principle is the same when personal property is so given or left to her. [See 1 Rop. Husband and Wife, by Jacob, 238; 2 Id. 509: *Richards* v. *Chambers*, *Seaman* v. *Duill*, 10 Ves. 580: *Hornsby* v. *Lee*, 2 Madd. 16: *Pickard* v. *Roberts*, 3 Madd. 384: *Purdew* v. *Jackson*, 1 Russ. 1: *Honner* v. *Morton*, 3 Russ. 65: *Stiffe* v. *Everitt*, 1 Myl. & K. 41: *Archer* v. *Gardiner*, 1 C. P. Coop. 340: *Elliott* v. *Remmington*, 9 Sim. 502; and *infra*, tit. SETTLEMENT.]

32. GRANT BY ASSIGNMENT OF ANNUITIES BY HUSBAND AND WIFE.

said [*grantor*], become entitled, as hereinbefore is mentioned,] retain to himself and themselves all such costs, charges, and expenses, as he or they may bear or sustain for or by reason of the trusts hereby reposed in him or them: AND from and after full satisfaction and payment thereof, shall, yearly and every year, whilst the said annuity of £—— shall continue payable to the said [*annuitant*], his executors, administrators, or assigns, pay and discharge the same annuity of £——, to him the said [*annuitant*], his executors, administrators, or assigns, on or at the days or times, and in manner, on, or in which the same shall become payable; AND shall in the next place, during the life of the said [*wife*], by and out of the said annuities of £——, [£——,] and £——, as the same shall be respectively payable, pay and discharge to the said [*grantee*], his executors, administrators, or assigns, the said annuity of £——, by four equal quarterly payments in the year, on &c., without making any deduction or abatement out of the same for present or future taxes, or otherwise; the first quarterly payment thereof to be made on the —— day of —— next ensuing the date of these presents: *And* if the said [*wife*] should depart this life on any other day than one of the said quarterly days of payment, shall pay a proportional part of the said annuity of £—— to the said [*grantee*], his executors, administrators, and assigns, for the time which she shall have lived of the then current quarter of a year: AND shall, during the joint lives of the said [*grantor*] and [*wife*] his wife, pay all the surplus and residue which shall remain of the said annuities of £—— and £—— (after paying the said costs and expenses, and the said annuities of £—— and £——), *Upon* and for such trusts, intents, and purposes as the said [*wife*] shall from time to time, by any writing under her hand, direct and appoint; *And* in default of such direction and appointment, into the hands of the said [*wife*], to the end and intent that the same may be for the sole, separate, and peculiar use and benefit of the said [*wife*], independently and exclusively of the said [*grantor*], and without being in anywise subject or liable to his control, debts, interference, or engagements: *And* the receipt or receipts of the said [*wife*], or of the person or persons to whom she shall direct the said residue and surplus, or any part thereof, to be paid, shall be a good and effectual discharge, or good and effectual discharges, for the money therein mentioned and acknow-

which she will then become entitled,] to retain costs and expenses occasioned by the trusts:

and subject thereto, to pay annuity of £——, previously granted;

And subject thereto during wife's life to pay grantee's annuity of £—— by quarterly payments;

with a proportional part to her death:

and subject thereto during joint lives of grantor and his wife, to pay surplus of two annuities as wife shall appoint; and in default, to her separate use;

the receipts of wife and her appointees, to be good discharges;

32. GRANT BY ASSIGNMENT OF ANNUITIES BY HUSBAND AND WIFE.

ledged to be received: AND in case the said [*grantor*] should depart this life in the lifetime of the said [*wife*], then shall pay the residue and surplus which shall remain of the said annuity of £—— (after answering the several purposes aforesaid), unto the said [*wife*], her executors, administrators, and assigns, for her and their proper use and benefit. AND THE SAID [*grantor*] and [*wife*] his wife, do hereby, jointly, for themselves, their heirs, executors, and administrators, *And* each of them doth hereby separately, for himself and herself, his and her heirs, executors, and administrators, covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that they the said [*grantor*] and [*wife*] his wife, or one of them, or the heirs, executors, or administrators, of them or one of them, will or shall pay unto the said [*grantee*], his executors, administrators, and assigns, the said annuity or yearly sum of £——, and also such proportional part thereof as aforesaid, clear of all deductions whatsoever (or such part of the said annuity as shall not be repurchased in pursuance of the proviso hereinafter contained), as and when the same shall become due and payable, according to the true intent and meaning of these presents. AND the said [*grantor*] and [*wife*] his wife, do hereby, jointly, for themselves, their heirs, executors, and administrators, *And* each of them doth hereby separately, for himself and herself, his and her heirs, executors, and administrators, covenant and agree with the said [*trustee*] and [*grantee*], and each of them, and the executors, administrators, and assigns of them and each of them, that the said several annuities of £——, [£——,] and £—— respectively, payable as aforesaid, are not in anywise revoked, determined, or made void: AND that by virtue of these presents, the same annuities respectively shall and may at all times hereafter, whilst the said annuity of £—— shall continue payable to the said [*grantee*], his executors, administrators, and assigns, be received by the said [*trustee*], his executors, administrators, or assigns, and be by him and them applied, upon the trusts, and for the intents and purposes hereinbefore mentioned, without any hindrance, molestation, or interruption by the said [*grantor*] and [*wife*] his wife, or either of them, or any other person or persons whomsoever: AND that he the said [*grantor*] and [*wife*] his wife, or one of them, will or shall, within three calendar months next ensuing the date of these presents, purchase, redeem, or

if grantor die before his wife, to pay surplus of one annuity to her.

Covenant by grantor and his wife, jointly and severally to pay annuity.

Covenant by grantor and wife that annuities are still subsisting;

and may be received by trustee;

that grantor and wife will, within three months, pay off all charges affecting an-

32. GRANT BY ASSIGNMENT OF ANNUITIES BY HUSBAND AND WIFE.

otherwise discharge and pay off, all annuities, debts, sums and sum of money, and other incumbrances, which now are legal or equitable charges or liens upon, or which in anywise affect the said several annuities of £——, [£——,] and £——, or any of them, or any part thereof respectively, (save and except the said annuity of £——, payable to the said [*annuitant*], his executors, administrators, and assigns, during the life of the said [*wife*], as hereinbefore is mentioned: AND that they the said [*grantor*] and [*wife*] his wife, or either of them, will not at any time, whilst the said annuity of £——, or any part thereof, shall continue payable to the said [*grantee*], his executors, administrators, or assigns, assign the said several annuities of £——, [£——,] and £——, or any of them, or any part thereof respectively, to any person or persons whomsoever, or subject, charge, or make liable, the said several annuities, or any of them, or any part thereof respectively, with the payment of any annuity, sum or sums of money, or other expenses or incumbrances whatsoever: AND FURTHER, that he the said [*grantor*] and [*wife*] his wife, and each of them, will and shall from time to time, and at all times hereafter, whilst the said annuity of £—— shall continue payable to the said [*grantee*], his executors, administrators, and assigns, at the costs and charges of the said [*grantor*] and [*wife*] his wife, or one of them, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful acts, deeds, devises, appointments, assignments and assurances in the law whatsoever, for the further and better, more perfectly and absolutely, assigning, appointing, and assuring the said several annuities, of £——, [£——,] and £——, or any of them, or any part thereof respectively, unto the said [*trustees*], his executors, administrators, and assigns, upon the trusts, and for the intents and purposes, hereinbefore expressed and contained, of and concerning the same, and for enabling the said [*trustee*], his executors, administrators, and assigns, to carry the trusts hereby created into execution; *As* by the said [*trustee*], his executors, administrators, or assigns, or the said [*grantee*], his executors, administrators, or assigns, or either of them, or their or his counsel learned in the law, shall be reasonably advised, devised, or required. AND *it is hereby declared and agreed*, that the said warrant of attorney, and the judgment to be entered up against the said [*grantor*] thereon, is intended and agreed

nuities (except annuity of £—— previously granted);

and will not, whilst grantee's annuity subsists, assign or charge original annuities:

and for further assurance by grantor and his wife.

warrant of attorney is only intended as a further security.

32. GRANT BY ASSIGNMENT OF ANNUITIES BY HUSBAND AND WIFE.

to be a further security to the said [*grantee*], his executors, administrators, and assigns, for the said annuity of £——: AND that no execution shall be issued or taken out upon such judgment, unless the same annuity should be in arrear and unpaid for the space of forty days next after the same shall become due and payable: AND that in case the same annuity, or any part thereof, should be in arrear and unpaid for the space of forty days, then and in such case, and as often as the same shall happen, it shall be lawful to and for the said [*grantee*], his executors, administrators, and assigns, to sue out execution upon or by virtue of such judgment as he or they shall think fit, for the recovery of the arrears of such annuity, and all costs, charges, damages, and expenses which he the said [*grantee*], his executors, administrators, or assigns, or any of them, shall bear, pay, sustain, or be put unto, for or by reason of the non-payment thereof; *And* by and out of the monies to be raised by the ways and means last hereinbefore mentioned, to pay, satisfy, and discharge all the arrears of the said annuity of £——, and all costs, charges, damages, and expenses, occasioned by the non-payment thereof; *And* to pay the residue or surplus of the money to be raised as lastly aforesaid, to the person or persons for the time being entitled thereto (*d*). AND the said [*grantee*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*grantor*] and [*wife*] his wife, and their respective heirs, executors, and administrators, that in case the said [*grantor*], and [*wife*] his wife, or either of them, or the heirs, executors, or administrators of the [*grantor*], should at any time or times hereafter be desirous of repurchasing the said annuity of £——, or any part thereof, which shall be equal to, or exceed one-fifteenth part thereof; and of such their, his, or her intention should give notice in writing to the said [*grantee*], his executors, administrators, and assigns, three calendar months before the —— day of —— in any year, then and in that case the said [*grantee*], his executors, administrators, or assigns, will or shall, on the —— day of —— next succeeding the time of the delivery of such notice, on receiving all sums of money which shall be then due for

No execution to be issued unless annuity be in arrear forty days;

Proviso for repurchase of annuity, or any part, not less than a fifteenth, at a fixed sum;

(*d*) As it was not intended to enter judgment on the warrant of attorney, the usual provision to dispense with reviving the judgment was omitted.

32. GRANT BY ASSIGNMENT OF ANNUITIES BY HUSBAND AND WIFE.

or on account of the arrears of the said annuity of £——, up to the day of repurchasing the same, and all sums of money which shall be then due for or on account of any costs, charges, damages, or expenses occasioned by the non-payment of the said annuity, accept and take for the re-purchase thereof, the sum of £——, or the sum of £——, for every fifteenth part of the said annuity of £——, which the said [*grantor*] and [*wife*] his wife, or either of them, or the heirs, executors, or administrators of the said [*grantor*], shall be so desirous of repurchasing as aforesaid; and so in proportion for any larger part of the said annuity than one fifteenth part; AND the said [*grantee*], his executors, administrators, or assigns, will or shall thereupon, at the costs and charges of the person or persons requiring the same, release, assign, or otherwise dispose of the said annuity of £——, or such part or parts thereof (not being less than one-fifteenth) which shall be so repurchased: AND will or shall, when the whole of the said annuity shall be so repurchased as aforesaid, acknowledge, or cause to be acknowledged, satisfaction on the record of the judgment (if any) that shall be entered up on the said warrant of attorney as aforesaid: AND do every other act, deed, or thing, from time to time, necessary or advisable for the avoiding, releasing, assigning, vacating, and discharging the said annuity of £——, or such part or parts thereof as shall be so repurchased as aforesaid; *As* by the said [*grantor*] and [*wife*] his wife, or either of them, or the executors, administrators, or assigns, of them or either of them, their, his, or her counsel learned in the law, shall be reasonably advised, devised, or required; so that for the doing thereof the said [*grantee*], his executors, administrators, or assigns, or the said [*trustee*], his executors, administrators, or assigns, be not compelled or compellable to travel from his or their usual place or places of abode or dwelling. IN WITNESS &c.

grantee thereupon to assign annuity or proportional part;

and when the whole is repurchased, acknowledge satisfaction on judgment.

33. GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

33. GRANT *of an* ANNUITY *for the Grantor's Life, secured by a* CHARGE *on Parcels mentioned in a Schedule, and on Lands to be purchased with Trust Stock, to both of which the Grantor is entitled under his Marriage Settlement, for his Life, in remainder after a previous Life Estate; with* POWERS *of* DISTRESS *and* ENTRY, *after the Determination of the previous Life Estate;* ASSIGNMENT *to a Trustee of an* ANNUITY, *charged on the above-mentioned Property, and limited to the Grantor for the joint Lives of himself and the previous Tenant for Life; and of the* DIVIDENDS *of Trust Monies, to which the Grantor is entitled for his Life, in remainder after a previous Life Interest; and of the* DIVIDENDS *of Grantor's Wife's Portion, secured to Trustees by a Bond and Demise from her Father, and to which the Grantor is entitled in possession for his Life;* DEMISE *to the Trustee of the Parcels mentioned in the Schedule, and the Lands to be purchased with the Trust Stock, for ninety-nine Years, if the Grantor should so long live, subject to the previous Life Estate:* COVENANT *to* SURRENDER *such Parts of the Parcels in the Schedule as are of* COPYHOLD *Tenure, and Copyholds to be purchased with Trust Stock, to the Use of the Trustee for the Grantor's Life, in remainder expectant on the previous Tenant for Life's Death, and subject to the prior Charges; Powers of Mortgage or Sale:* COVENANT *to appear at* INSURANCE *Offices, &c., and to pay additional Premiums; and not to consent to the Sale, Transfer, or Disposition of the Hereditaments demised, or of the Annuity and Dividends assigned, or of the Securities on which they shall be invested; or to the Removal or Nomination of Trustees without Grantee's Consent: with other special Covenants, &c.: Proviso as to* JUDGMENT, *and Power to* REPURCHASE, *on One Month's Notice.*

Parties.

THIS INDENTURE, made &c., BETWEEN [*grantor*], of &c., of the first part; [*grantee*], of &c., of the second part; and

[*trustee*], of &c., of the third part. WHEREAS, under and by virtue of an indenture bearing date &c., and made between [*grantor's father*], of &c., since deceased, and [*grantor's mother*], his wife, of the first part; the said [*grantor*] therein described to be the eldest son of the said [*father*], by the said [*mother*], his wife, of the second part: [*lady's father*], of &c., of the third part; [*lady*], eldest daughter of the said [*her father*], by —— his wife, of the fourth part; [*two trustees*], of &c., of the fifth part; [*two other trustees*], of &c., of the sixth part; and [*two other trustees*], of &c., of the seventh part; being the settlement made previously to the marriage then intended to be, and which has since been, solemnized, between the said [*grantor*] and [*wife, maiden name*], *The* manors and freehold and copyhold messuages, farms, lands, and hereditaments, described in the schedule hereunder written, or hereunto annexed, now stand limited, settled, and assured, *To the use,* intent, and purpose that the said [*grantor*] and his assigns, during the joint lives of the said [*grantor*], and the said [*his mother*], may receive and take, out of all and every the same hereditaments and premises, or any part thereof, *An* annuity of [*annuity assigned*], clear of all deductions, and payable quarterly; with the usual powers of distress on the said hereditaments for the recovery of the said annuity, and every part thereof, in case any quarterly payment thereof should be in arrear by the space of thirty days after the day appointed for payment of the same; and also the usual power of entry on the same hereditaments, in case the said annuity, or any part thereof, should be in arrear by the space of sixty days after any of the same days of payment: *And subject* to the said annuity of [*annuity assigned*], and to the term, trust, powers, and remedies for recovering and enforcing the payment thereof, *To the use* of the said [*mother*] and her assigns, during her life, without impeachment of waste; With remainder, *subject* to a term of —— years, and the trusts thereof, for raising £——, or, as the case shall require, £——, for the purposes therein mentioned, *To the use* of the said [*grantor*] and his assigns, during his life, without impeachment of waste: With divers remainders over. AND other lands and hereditaments, described in the said indenture, and which have been since sold, pursuant to the powers contained in the same indenture for that purpose, as hereinafter mentioned, were settled and assured, *To* the same or the like uses, in-

33. GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

Recital of settlement on grantor's marriage;

whereby freehold lands were settled to the use that the grantor might, during the lives of himself and his mother, receive an annuity;

with powers of distress,

and entry;

and subject thereto,

to the use of the mother for life,

with remainder, subject to a term for raising portions, to the use of grantor for life.

And other lands since sold were settled,

to the same uses, &c.

33. GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

tents, and purposes as aforesaid. AND, under and by virtue of the powers contained in the said indenture, £ ——, three per centum consolidated Bank Annuities, purchased with monies which arose from the sale of certain parts of the hereditaments, which were comprised in the same indenture, and which were sold pursuant to the powers contained in the same indenture for that purpose, are now standing in the names of the said [*trustees of the fifth part*], in the books of the governor and company of the Bank of England, *Upon trust*, to be reinvested in the purchase of other lands and hereditaments, to be settled to the same or the like uses, upon such or the same trusts, ends, intents, and purposes, as were declared in and by the said indenture of settlement, of the lands and hereditaments which have been sold: *And* the interest, dividends, and income, arising from the said Bank Annuities are in the mean time, until such lands and hereditaments shall be purchased, to be applied, and to go and be had, received, and taken, by such person or persons, upon such trusts, and for such ends, intents, and purposes, respectively, and in such course, order, and manner, as the rents and profits of the lands and hereditaments so to be purchased therewith would go and be payable, in case such purchase and settlement was or were actually made. AND by the said indenture of settlement the said [*mother*] directed and appointed, that the heirs and assigns of the survivor of the trustees appointed by the therein recited will of [*mother's father*], esquire, bearing date &c., (by which he gave and devised all his lands and hereditaments, in the county of ——, to trustees therein named, and their heirs, *In trust* for his youngest daughter [*tenant for life*], since the wife of [*husband*], for her life; with remainder to trustees for her life, to support the contingent remainders; with remainder to her first and other sons successively in tail male; with remainder to her daughters as tenants in common in tail general: with remainder to the use of the same trustees, their heirs and assigns, *Upon trust* for sale; and to pay, apply, and dispose of all the clear residue of the money arising by such sale, unto and amongst the testator's eldest daughter [*daughter*], now the wife of [*husband*], his two nieces [*nieces*], now the wife of [*husband*], and the said [*mother*], and his niece [*niece*], the daughter of his brother [*brother*], equally for their own sole and separate use, in manner therein mentioned) to sell and

And a sum of stock purchased with proceeds of lands sold are held,

upon trust, to be reinvested in lands to be settled to the same uses, &c.

And by the settlement grantor's mother directed the trustees of her father's will,

(whereby he devised his lands in trust for his youngest daughter for life;

remainder to trustees to support contingent remainders;

remainder to her first and other sons in tail male; remainder to her daughters in common in tail general;

remainder to the use of trustees in fee, upon trust for sale;

dispose of the said hereditaments and premises, in the county of ——, in the event of the death of the said [*tenant for life*] without issue, as hereinbefore mentioned; and pay, assign, and transfer the one-fourth part or share of her the said [*mother*], of the monies to arise from such sale, unto the said [*trustees of the fifth part*], their executors, administrators, and assigns, *Upon trust*, with the consent of the said [*mother*] and [*grantor*], or the survivor of them, testified by writing under their or his or her hands or hand, to invest the same in or upon government or real securities, or in some of the public stocks or funds, in the names of the said [*trustees of the fifth part*], or of the survivor of them, his executors, administrators, or assigns; and to alter the securities as therein mentioned; and from time to time pay to the said [*mother*] the interest, dividends, and proceeds of the said trust funds and securities during her life, for her own sole and separate use: *And* after her decease, *Upon trust* that they the said [*trustees of the fifth part*], and the survivor of them, his executors, administrators, and assigns, should, from time to time, pay to the said [*grantor*], or his assigns, the interest, dividends, and proceeds of the said trust funds and securities, during his life, to and for his and their own use and benefit. AND, under and by virtue of further trusts, contained in the said indenture of settlement, the said [*grantor*] is also entitled to receive the interest, which during his life shall become due and payable for the sum of [*lady's portion*]; which was secured to be paid by the said [*lady's father*], his heirs, executors, or administrators, unto the said [*trustees of the sixth part*], their executors, administrators, or assigns, as trustees under the said indenture of settlement, by the bond of the said [*lady's father*], and by an indenture of demise, respectively bearing date on the day of the date of the said indenture of settlement: The indenture of demise being made between the said [*lady's father*], of the one part; and the said [*trustees of the sixth part*], of the other part; by which the said [*lady's father*] demised unto the said [*trustees of the sixth part*], their executors, administrators, and assigns, divers hereditaments in the counties of —— and ——, For a term of one thousand years; *Subject* to redemption, on payment of the said sum of [*lady's portion*], and interest for the same at £5 per centum per annum, at a day or at a time thereby appointed. AND WHEREAS the said

and to pay the proceeds to grantor's mother and three others, equally to their separate use),

to sell the messuages, &c., in the event of the death of tenant for life without issue;

and pay the mother's fourth part of the monies to trustees, upon trust to invest;

and pay the interest to the mother for life, for her separate use;

and after her decease to grantor for his life.

And under trusts in the settlement, grantor is entitled to receive the interest during his life of his wife's portion;

which was secured by trustees by her father's bond.

Recital of con-

33. GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

[*grantor*] hath contracted with the said [*grantee*], to grant to him, his executors, administrators, and assigns, an annuity of £——, for (*a*) the life of the said [*grantor*] for the price of £——. AND WHEREAS, for securing the payment of the said annuity, the said [*grantor*] hath, by his bond bearing even date with these presents, become bound to the said [*grantee*], his executors, administrators, and assigns, in the sum of [*double the purchase-money*]; *Subject* to a condition for making the same bond void, on payment to the said [*grantee*], his executors, administrators, or assigns, of the said annuity, and a proportional part thereof, in manner and at the times hereby appointed for payment thereof respectively: AND as a further security for payment of the said annuity, the said [*grantor*] hath by a writing under his hand and seal, also bearing even date with these presents, authorized [*attornies*], attornies of her Majesty's Court of Common Pleas at Westminster, jointly and severally, or any other attorney of the said Court, to suffer judgment to be entered up against him in the said Court of Common Pleas, in an action of debt upon the said bond, at the suit of the said [*grantee*], for the sum of [*double the purchase-money*], and costs of suit; and judgment is to be forthwith entered up against the said [*grantee*], under the authority of the said warrant of attorney: AND upon the treaty for the purchase of the said annuity, it was agreed, that the same should be further secured by the several charges, demises, assignments, and provisions hereinafter contained. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— (*b*) of lawful British money to the said [*grantor*] paid by the said [*grantee*], immediately before the execution of these presents; the receipt whereof the said [*grantor*] doth hereby acknowledge; and from the same doth acquit, release, and for ever discharge the said [*grantee*], his heirs, executors, adminis-

Contract for purchasing annuity.

Annuity bond.

Recital of warrant of attorney.

Recital that annuity was to be further secured by the charges, &c. hereinafter contained.

First testatum.

Consideration paid in money.

FOR YEARS, DETERMINABLE ON DEATH.

(*a*) "And during the term of ninety-nine years, if the said [*grantor*] should so long live: for" &c., *ut supra.*

PAYMENT IN BANK NOTES.

(*b*) If it be the case, say,

"£——, in notes of the Governor and Company of the Bank of England, to the said [*grantor*]," &c., *ut supra.*

[But this, though necessary to be stated in the *memorial*, may be omitted in the *deed.*]

33. GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

trators, and assigns, *The* said [*grantor*] *doth* give, grant, and confirm unto the said [*grantee*], his executors, administrators, and assigns, ONE annuity, or clear yearly sum of £—— of lawful British money, to be charged and chargeable upon and issuing, payable, had, received, and taken from and out of ALL and singular the freehold hereditaments mentioned, comprised, and particularly described, in or by the schedule hereunder written, or hereunto annexed, or which from time to time, and at any time hereafter, shall be purchased with the said sum of £—— three per centum consolidated Bank Annuities, or any part thereof, or the money to arise and be produced from the same Bank Annuities, or any part thereof, pursuant to the powers contained in the said indenture of settlement; *But subject* nevertheless, and without prejudice to the life estate of the said [*mother*] therein: AND ALSO upon, from, and out of, the reversion and reversions, remainder and remainders, yearly and other rents, profits, duties, suits, and services of the said manors, messuages, farms, lands, tenements and hereditaments, hereby charged or made chargeable with the payment of the said annuity or yearly sum of £——, and upon, from, and out of every part and parcel of the same, with their and every of their rights, royalties, members, and appurtenances. TO HAVE, hold, receive, take, and enjoy the said annuity, and every part thereof, unto the said [*grantee*], his executors, administrators, and assigns, henceforth, during the life of the said [*grantor*], The said annuity to be payable and paid to the said [*grantee*], his executors, administrators, or assigns, at or in the common dining-hall of the Inner Temple, London, upon the —— day of ——, &c., in every year, during the (*c*) life of the said [*grantor*], between the hours of two and four in the afternoon of the same days respectively, without any deduction or abatement whatsoever; the first payment thereof to be made on the —— day of —— now next ensuing, provided the said [*grantor*] should be then living: and in case the said [*grantor*] should die between, or in the interval of any two of the said quarterly days of payment, or before the —— day of —— next; then, such a proportional part of the said annuity for the time up to and inclusive of the day of the

Grant of annuity;

charged on parcels mentioned in schedule;

and on lands to be purchased with trust stock;

subject to grantor's mother's life estate:

and on the remainder, &c. of the manors, &c. hereby charged.

Habendum of annuity for grantor's life;

payable quarterly;

with proportional part to his death.

(*c*) "Term of ninety-nine years, if the said [*grantor*] should so long live," &c.

FOR YEARS DETERMINABLE ON DEATH.

33. GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

decease of the said [*grantor*], and after the day of payment (if any) next preceding that event, to be paid to the [*grantee*], his executors, administrators, or assigns, immediately after the decease of the said [*grantor*]. AND the said [*grantor*] doth hereby also grant unto the said [*grantee*], his executors, administrators, and assigns, that from time to time after the determination of the estate for life of the said [*mother*], when and as often as it shall happen that the said annuity or yearly sum of £——, or any part thereof, shall be in arrear and unpaid in the whole or in part, by the space of twenty-one days next over or after any of the days or times whereon the same is hereinbefore appointed to be paid as aforesaid, it shall be lawful to and for the said [*grantee*], his executors, administrators, and assigns, into and upon the hereditaments hereby charged with the said annuity, or into and upon any part thereof, to enter and distrain for the same annuity, and all the arrears thereof: *And* the distress and distresses, then and there found, to detain, manage, sell, and dispose of, in the same manner, in all respects, as distresses for rent reserved upon leases for years may or ought to be detained, managed, sold, and disposed of; and as if the said annuity was a rent reserved upon a lease for years: *To the intent*, that the said [*grantee*], his executors, administrators, or assigns, may thereby, therewith, or otherwise, be fully satisfied and paid the said annuity, and all the arrears thereof; and all costs, charges, and expenses, to be occasioned by the non-payment thereof, at the days and times hereinbefore appointed for payment of the same.

Power of distress after the determination of a life estate.

Power of entry after the determination of a life estate.

AND the said [*grantor*] doth also grant unto the said [*grantee*], his executors, administrators, and assigns, that from time to time, after the determination of the estate of the said [*mother*], when and as often as it shall happen that the said annuity or any part thereof shall be in arrear and unpaid by the space of twenty-eight days, next over or after any one of the days whereon the same is hereinbefore appointed to be paid as aforesaid; *Then*, and from time to time, as often as it shall so happen, and either upon or at any time after the expiration of the said twenty-eight days, it shall be lawful to and for the said [*grantee*], his executors, administrators, and assigns, (although no legal or formal demand (*d*)

(*d*) [*Vide ante*, p. 45.]

33. GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

should have been made of the said annuity), into and upon the said hereditaments, or into and upon any part thereof in the name of the whole of the same, to enter: *And* the same hereditaments to have, hold, and enjoy; and the rents and profits thereof, and of every part thereof, to receive, and take to and for his and their own use and benefit, until he and they shall thereby or therewith, or otherwise, be fully satisfied and paid the said annuity and all the arrears thereof; and also so much of the same annuity, as from time to time shall incur and grow due, during such time as the said [*grantee*], his executors, administrators, and assigns, shall continue in possession of the said hereditaments, after every such entry as aforesaid; and also all such costs, losses, charges, damages, and expenses, as shall be occasioned by non-payment of the said annuity, or any part thereof, at the days and times aforesaid: *And* such possession, when taken, to be without impeachment of waste as far as the said [*grantor*] can grant that privilege. AND THIS INDENTURE FURTHER WITNESSETH, that for further, better, and more effectually securing the said annuity or yearly sum of £——, and for the considerations aforesaid, and also in consideration of 10*s.*, to the said [*grantor*] paid by the said [*trustee*], immediately before the execution of these presents, the receipt whereof is hereby acknowledged; the said [*grantor*] *doth* bargain, sell, assign, transfer, and set over unto the said [*trustee*], his executors, administrators, and assigns, ALL THAT the said annuity, yearly rent-charge, or annual sum of [*annuity assigned*], to which the said [*grantor*] is entitled for the joint lives of himself and the said [*mother*], under the uses or trusts of the said indenture of settlement: AND all and every sums and sum of money which from time to time shall become due and payable in respect of the said annuity of [*annuity assigned*]: AND ALSO, all and singular the dividends, interest, and income (if any) which from time to time, and at all times, after the decease of the said [*mother*], and thenceforth during the life of the said [*grantor*], shall become due and payable unto the said [*grantor*] for or in respect of the share of the said [*mother*], of the money which shall arise from the sale, which the said [*mother*] did, by the said indenture of settlement, direct to be made of the hereditaments heretofore of the said [*mother's father*] deceased; and also the dividends, interest, and income of the stocks, funds, and securities, in and upon which one-fourth part of the

Second testatum.

Assignment by grantor, to trustee, of annuity settled on grantor for the joint lives of himself and his mother:

and also the dividends, after grantor's mother's decease, become due to him for the share of the money from the sale;

33 . GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

same money, or any part thereof, shall at any time or times, and from time to time, be invested: AND ALSO all the dividends, interest, and income which from time to time, and at all times hereafter, during the life of the said [*grantor*], shall become due and payable in respect of the said sum of [*lady's portion*], secured to be paid by the said [*lady's father*], his executors or administrators, unto the said [*trustees of the sixth part*], their executors, administrators, and assigns, as trustees under the said indenture of settlement, by the bond and indenture of demise or mortgage, entered into and made by the said [*lady's father*] as before mentioned; and also the dividends, interest, and income of the stocks, funds, and securities, in, or upon which the said sum of [*lady's portion*], or any part thereof, shall from time to time, and at any time hereafter, during the life of the said [*grantor*], be laid out or invested: AND all the right, title, interest, property, trust, benefit, claim, and demand whatsoever, at law and in equity, or otherwise howsoever, of him the said [*grantor*], of, in, to, or out of the annuity, dividends, interest, and income hereby assigned, or otherwise assured, or intended so to be, and every part thereof. To HAVE, hold, ask, demand, receive, and take the annuity, yearly rent-charge, or annual sum of [*annuity assigned*], hereby assigned or otherwise assured, or intended so to be, and every part thereof, unto the said [*trustee*], his executors, administrators, and assigns, henceforth, during the joint lives of the said [*mother*] and [*grantor*], and for all other the estate, term, and interest, which the said [*grantor*] hath therein; and in as full, ample, and beneficial a manner, to all intents and purposes, as the said [*grantor*] can or may assign, or could or might have held and enjoyed the same, in case these presents had not been made: AND TO HAVE, hold, ask, demand, receive, take, and enjoy the said dividends, interest and income; and all and singular other the property, money, and effects hereby assigned, or otherwise assured, or intended so to be, and every part and parcel thereof, unto the said [*trustee*], his executors, administrators, and assigns, henceforth as his and their own money, property and effects; and in as full, large, ample, and beneficial a manner, to all intents and purposes whatsoever, as he the said [*grantor*] can or may assign, or could or might have held and enjoyed the same, in case these presents had not been made: UPON THE TRUSTS *nevertheless*, and for the ends, intents, and purposes hereinafter

and also the dividends which during grantor's life shall become due, for his wife's portion;

and all the right, &c.

Habendum of annuity.

Habendum of dividends, &c.

upon the trusts, &c. hereinafter declared.

mentioned, expressed, and declared, concerning the same. And the said [*grantor*] *doth* make, constitute, and appoint the said [*trustee*], his executors, administrators, and assigns, to be the true and lawful attorney and attornies of him the said [*grantor*], his executors and administrators, in the name or names of him the said [*grantor*], his executors or administrators, or in the name or names of him the said [*trustee*], his executors, administrators, or assigns, to ask, demand, sue for, recover, and receive of and from the trustee or trustees for the time being of the said indenture of settlement, or any or either of them, or whom else it may concern, the annuity of [*annuity assigned*], and dividends, interest, and income hereby assigned, or otherwise assured, or intended so to be, and every part thereof; *And* on receipt thereof, or of any part thereof, to make, sign, seal, execute, and deliver, good and sufficient receipts, releases, acquittances, or other discharges, for the whole or any part of the said annuity of [*annuity assigned*], dividends, interest, and income; *And generally* to make, do, and execute any other act, deed, matter, or thing whatsoever, for the purpose of receiving and obtaining the payment of the annuity of [*annuity assigned*], dividends, interest, and income hereby assigned, or otherwise assured or intended so to be; *And* one or more attorney or attornies under him or them, for all or any of the purposes aforesaid, for and in the name, and as the act and deed, or in the several names, and as the several acts and deeds, of him the said [*grantor*], his executors or administrators, to make, nominate, depute, and appoint; and at will and pleasure to revoke; and notwithstanding any such substitution, deputation, or appointment of another attorney or attornies under him the said [*trustee*], his executors, administrators, or assigns, to exercise and perform all or any of the powers and authorities hereinbefore expressed and contained, and given to him and them: And the said [*grantor*] doth hereby give and grant unto the said [*trustee*], his executors, administrators, and assigns, and to his and their substitute or substitutes, the full and whole power and authority of him the said [*grantor*] over the premises; *And* doth hereby undertake to ratify, confirm, and allow to be valid and sufficiently effectual and available, to all intents and purposes whatsoever, all and whatsoever the said [*trustee*], his executors, administrators, or assigns, or his or their substitute or substitutes, shall lawfully do, or cause to be done, in or about the premises, by virtue of

33. GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

Power of attorney.

33. GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

these presents. AND THIS INDENTURE FURTHER WITNESSETH, that, for further, better, and more effectually securing the said annuity of [*annuity granted*], and for the considerations aforesaid, the said [*grantor*] *doth* grant, bargain, sell, lease, and demise unto the said [*trustee*], his executors, administrators, and assigns, ALL and singular the manors and freehold messuages, farms, lands, tenements, and hereditaments mentioned and comprised in and particularly described by the schedule hereunder written, or hereunto annexed: AND ALSO all and singular the messuages, lands, and hereditaments, which from time to time, and at any time hereafter, shall be purchased with the said sum of £——, three per centum consolidated Bank Annuities, or any part thereof, or the money to arise and be produced from the same Bank Annuities, or any part thereof, pursuant to the powers contained in the said indenture of settlement, and every part and parcel of the same, with the appurtenances: AND the reversion and reversions, remainder and remainders, yearly and other rents, profits, duties, suits, and services of the same manors, lands, and hereditaments, and every part and parcel of the same, with their respective rights, royalties, members, and appurtenances. TO HAVE AND TO HOLD the said manors, messuages, farms, lands, tenements, hereditaments, and all and singular other the premises hereby granted or demised, or otherwise assured, or intended so to be, and every part and parcel of the same, with the appurtenances, (*Subject* only to the life estate of the said [*mother*], as aforesaid), unto the said [*trustee*], his executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during and unto the full end and term of ninety-nine years thence next ensuing, and fully to be complete and ended, if the said [*grantor*] should so long live; without impeachment of or for any manner of waste, as far as the said [*grantor*] can grant that privilege: UPON THE TRUSTS *nevertheless*, and for the ends, intents, and purposes hereinafter expressed and declared concerning the same. AND the said [*grantor*] doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*trustee*], his heirs and assigns, that he the said [*grantor*] will, at his own costs and charges, on the request of the said [*trustee*], his executors or administrators, at the next court, or respective courts, to be held for the

Third testatum.

Demise to trustee, of

parcels mentioned in schedule;

and lands to be purchased with trust stock;

and the reversion, &c.

Habendum,

(subject to grantor's mother's life estate)

to trustee for ninety-nine years, if grantor should so long live;

without impeachment of waste:

upon the trusts, &c. hereinafter declared.

Covenant by grantor with trustee, to

33. GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

manor or respective manors of which the copyhold lands hereinafter described or referred to are parcel, or as soon after as conveniently may be, either in person or by attorney, surrender into the hands of the lord or lords, lady or ladies, of the respective manors of which the same copyhold premises are held, ALL such, and so many, and such parts, as are of copyhold or customary tenure, of the messuages, farms, lands, tenements, and hereditaments mentioned and comprised in and particularly described by the schedule hereunder written, or hereunto annexed; AND ALSO of all and singular the copyhold messuages, lands, and hereditaments, which from time to time, and at any time hereafter, shall be purchased with the said sum of £——, three per centum consolidated Bank Annuities, or any part thereof, or the money to arise and be produced from the same Bank Annuities, or any part thereof, pursuant to the powers contained in the hereinbefore mentioned indenture of settlement; TO THE USE of the said [*trustee*], his heirs and assigns, during the life of the said [*grantor*], in remainder after and expectant on the death of the said [*mother*], and subject to the charges affecting the estate of the said [*grantor*]: *To be held* by him and them, UPON and for such trusts, intents, and purposes, as will correspond with the trusts, powers, intents, and purposes, which are hereinafter expressed and declared concerning the freehold hereditaments hereinbefore demised, for the said term of ninety-nine years, determinable as aforesaid, or as near thereto as the nature and quality of the tenure of the said copyhold premises, and the usage and customs of manors, of which the same respectively are holden, will admit. *To the intent* that the said copyhold parts of the said messuages, farms, lands, tenements, and hereditaments, may be charged and chargeable with the payment of the said annuity of [*annuity granted*]: AND that in the meantime, until such surrender shall be passed and perfected, he the said [*grantor*], and his heirs, will stand possessed of and interested in the said copyhold or customary premises, with the appurtenances, *In trust* to surrender the same, in manner and for the purposes aforesaid. AND *it is hereby declared and agreed*, that the said annuity of [*annuity assigned*], and the dividends, interest, and income, hereby assigned, or otherwise assured, or intended so to be; and also the term of ninety-nine years determinable as aforesaid, hereby granted to the said [*trustee*], his executors, administrators,

surrender

copyhold or customary parcels;

and also copyholds which shall be purchased with trust stock;

to the use of trustee for grantor's life in remainder, and subject to charges;

upon correspondent trusts, &c. with freehold hereditaments,

to the intent, that the copyhold, &c. may be charged with annuity.

Covenant, that until surrender perfected, grantor will stand possessed of copyholds in trust.

33. GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

and assigns, are respectively assigned and granted or demised to him and them, UPON TRUST for better securing to the said [*grantee*], his executors, administrators, and assigns, the due and regular payment of the said annuity of [*annuity granted*]; AND UPON TRUST, that in case, and when and as often as the said annuity of [*annuity granted*], or any quarterly payment thereof, shall be in arrear and unpaid, in the whole or in part, by the space of forty days next after any one of the days or times hereinbefore appointed for payment thereof, the said [*trustee*], his executors, administrators, or assigns, shall, by and out of the said annuity of [*annuity assigned*], and the dividends, interest, and income, hereby assigned or otherwise assured, or intended so to be; and also by and out of the rents and profits of the hereditaments hereby granted or demised or otherwise assured, or intended so to be; or by mortgage or sale of the said annuity of [*annuity assigned*], dividends, interest and income, and of the hereditaments hereby demised, or of a competent part thereof, for all or any part of the said term of ninety-nine years, determinable as aforesaid; or by bringing actions against, or making distresses upon, all and every or any one or more of the present or future tenants of the said hereditaments and premises, for recovery of the rents then in arrear; or by making entries upon the same hereditaments and premises; or by all and every, or any one or more of the said ways and means; or by any other lawful and reasonable ways and means whatsoever, levy and raise such arrears of the said annuity of [*annuity granted*], as from time to time shall become due, and remain unpaid; together with all such costs, charges, damages, and expenses, as the said [*grantee*], his executors, administrators, or assigns, shall incur, expend, sustain, or be put unto, by reason of the non-payment of the said annuity of [*annuity granted*], or any part thereof: together with the costs, charges, and expenses attending the execution of the trusts hereby created: AND UPON THIS FURTHER TRUST, that the said [*trustee*], his executors, administrators, or assigns, shall, in the first place, retain to and reimburse unto and for himself and themselves the costs, charges, and expenses of and attending the execution of the trusts hereby reposed in him and them; *And* in the next place pay and satisfy the said [*grantee*], his executors, administrators, and assigns, all the arrears of the said annuity of [*annuity granted*]; and all costs, charges,

Trusts of annuity, &c. assigned:

upon trust, when annuity shall be in arrear forty days,

out of annuity and dividends assigned;

and of rents of hereditaments demised;

or by mortgage or sale of the premises;

to raise the arrears of annuity,

with costs:

damages, and expenses which he and they shall have incurred, suffered, borne, sustained, and laid out, by reason and on account of the non-payment thereof, or in or about recovering or enforcing the payment of the same: AND FURTHER UPON TRUST, in the meantime, and until the said annuity of [*annuity granted*], or some quarterly payment thereof, shall be in arrear or unpaid, in the whole or in part, by the space of forty days next after some or one of the times hereby appointed for payment of the same; and also from time to time, when and as often as all arrears of the said annuity and the said costs, charges, damages, and expenses, shall be raised or fully satisfied and paid, to permit and suffer the said [*grantor*], or his assigns, to receive and take the said annuity of [*annuity assigned*], and also the dividends, interest, and income, hereby assigned, or otherwise assured, or intended so to be, and every part thereof; and also to receive and take the rents and profits of the hereditaments hereby demised, or intended so to be, to and for his and their own use and benefit, without any interruption, hindrance, or denial of, from, or by him the said [*trustee*], his executors, administrators, or assigns: AND FURTHER UPON TRUST, from time to time, after paying the said annuity of [*annuity granted*], when and as the same shall become due and payable; and also after paying, deducting, and retaining such costs, charges, damages, and expenses as aforesaid, to pay to the said [*grantor*], or his assigns, or to whom he or they shall direct or appoint, the money (if any) which from time to time shall remain in the hands of the said [*trustee*], his executors, administrators, or assigns, unapplied to any of the purposes aforesaid. AND *it is hereby declared and agreed*, that the person or persons who shall pay to the said [*trustee*], his executors, administrators, or assigns, all or any part of the said annuity of [*annuity assigned*], or of the dividends, interest, and income, hereby assigned or otherwise assured, or intended so to be, or the rents and annual profits of the hereditaments hereby granted and demised or otherwise assured, or intended so to be, or advance any money upon any sale or sales, or on the security of any mortgage or mortgages of the same annuity of [*annuity assigned*], dividends, interest, and income, hereditaments, and premises, or any part thereof, or otherwise pursuant to the trusts hereinbefore contained, shall not be obliged or required to see to the application of the said an-

33. GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

And upon trusts, until annuity granted shall be in arrear forty days;

to permit grantor to receive the annuity and dividends;

and rents;

And upon trust, after paying annuity granted;

and after paying and retaining costs and damages,

to pay the surplus money to grantor.

Trustees' receipts to be good discharges.

33. GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

nuity of [*annuity assigned*], dividends, interest, and income, rents, profits, and money respectively, or any of them; or be answerable or accountable for the misapplication or non-application of the same, or any part thereof: AND that all receipts which shall be given by the said [*trustee*], his executors, administrators, or assigns, for all or any part of the said annuity of [*annuity assigned*], dividends, interest, and income, rents, profits, and monies respectively, shall be good and sufficient acquittances and discharges for the sum or sums of money, which by the said receipts, and every of them, shall be acknowledged or expressed to be, or to have been received. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, or some or one of them, will or shall, from time to time, pay unto the said [*grantee*], his executors, administrators, or assigns, the annuity of [*annuity granted*] hereby granted, or intended so to be, and also such proportional part thereof as aforesaid, free and clear of and from all taxes, charges, rates, and other deductions whatsoever, parliamentary or otherwise, at the days and times, and in manner and form hereinbefore expressed, limited, and appointed for payment thereof, and according to the true intent and meaning of these presents: AND ALSO, that (subject to the life estate of the said [*mother*] as aforesaid) he the said [*grantor*] now hath in himself good right or full power, and lawful and absolute authority, to subject and charge all the said manors, messuages, farms, lands, tenements, and hereditaments, hereby intended to be charged with the said annuity of [*annuity granted*], with the appurtenances, during the life of him the said [*grantor*], to and with the payment of the same annuity of [*annuity granted*], and the powers and remedies hereby given for compelling and enforcing the payment thereof; *And also* to assign the said annuity of [*annuity assigned*], and also the dividends, interest, and income hereby assigned, or otherwise assured, or intended so to be; *And also* to demise the said manors, messuages, farms, lands, tenements, and hereditaments, with the appurtenances, for the said term of ninety-nine years, determinable as aforesaid; *And also* to surrender the copyhold hereditaments hereby covenanted to be surrendered unto the said [*trustee*], his heirs, executors,

Covenant by grantor to pay an annuity for his life:

and that, subject to a previous life estate, grantor has good right to charge the hereditaments with the annuity granted;

to assign annuity and dividends assigned;

to demise hereditaments;

and to surrender copyholds to trustee, upon the trusts aforesaid;

33. GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

administrators, and assigns, upon the trusts, and for the purposes aforesaid, and according to the true intent and meaning of these presents: AND ALSO, that the annuity of [*annuity assigned*], dividends, interest, and income hereby assigned or otherwise assured, or intended so to be, and also the said manors, messuages, farms, lands, tenements, and hereditaments, hereby intended to be charged with the said annuity of [*annuity granted*], and also demised and covenanted to be surrendered as aforesaid, now are free from all charges and incumbrances whatsoever, at any time done, committed, imposed, or suffered by the said [*grantor*], or any person or persons claiming, or to claim, by, from, under, or in trust for him; [an annuity or yearly sum of [*annuity previously granted*], granted by the said [*grantor*], for his life to [*prior annuitant*], of &c., by an indenture, bearing date, &c., subject to be repurchased on the terms in the same indenture expressed; and the charges mentioned in the same indenture of settlement only excepted]: AND ALSO, that he the said [*grantor*] will, at his own costs and charges, whenever thereunto requested by the said [*grantee*], his executors, administrators, or assigns, personally attend at the Pelican Life Insurance office, or any other office of insurance in London or Westminster, or before an agent or agents in the country, of such office or offices, and produce such vouchers and certificates as such office or offices shall require, for the purpose and to the end that a policy of insurance may be obtained, by and at the expense of the said [*grantee*], his executors, administrators, or assigns, on the life of the said [*grantor*]: AND FURTHER, that he the said [*grantor*], will not at any time during the continuance of the annuity hereby granted, go on the seas, or in parts beyond the seas, without giving to the said [*grantee*], his executors, administrators, or assigns, as early notice thereof as may be: AND that in case the said [*grantee*], his executors, administrators, or assigns, should have previously insured, or should insure, any sum or sums of money not exceeding [*purchase-money*], on the life of the said [*grantor*], and should pay an additional rate of insurance by reason of the said [*grantor*] going on the seas, or beyond the seas, *Then* for and in respect of so much time as the said [*grantor*] shall go on the seas, or be in parts beyond the seas, and the said [*grantee*], his executors, administrators, or assigns, shall pay any additional premium or premiums of insurance,

and that premises are free from incumbrances,

except previous annuity, and certain other charges:

and that grantor will appear at insurance office,

and not go on the seas without giving grantee notice thereof;

and to pay any additional premium.

33. GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

he the said [*grantor*], his heirs, executors, or administrators, will reimburse and pay to the said [*grantee*], his executors, administrators, and assigns, such sum and all such sums of money, as the said [*grantee,*] his executors, administrators, and assigns, shall pay, as and for an additional premium or premiums, in respect of the said [*grantor*] going upon or being beyond the seas: AND that all and every such sums and sum of money shall be charged and chargeable upon the annuity, dividends, interest, and income, hereby assigned or otherwise assured, and also upon the hereditaments hereby demised, and the copyhold hereditaments hereby covenanted to be surrendered; and be raisable under and by virtue of the trusts hereby declared of the same respectively; and also under and by virtue of the said warrant of attorney, bearing even date with these presents, and the judgment to be entered up under the authority of the same warrant of attorney: AND ALSO, that he the said [*grantor*] will not do any act, deed, matter, or thing, whereby any policy or policies of assurance, for any sum or sums not exceeding [*purchase-money*], effected or to be effected on his life by the said [*grantee*], his executors, administrators, or assigns, shall or may be rendered void. AND FURTHER, that he the said [*grantor*] will not, while the said annuity of [*annuity granted*] shall continue payable to the said [*grantee*], his executors, administrators, or assigns, consent to the sale, transfer, or disposition of all or any of the hereditaments hereby charged and demised, and covenanted to be surrendered; or of the annuity of £—— [*annuity assigned*], dividends, interest, and income hereby assigned, or otherwise assured, or intended so to be; or of the stocks, funds, or securities in or upon which the same, or any part hereof, shall from time to time be invested; or to the removal or dismission of any trustee or trustees with whom or in whose name or names, either solely and alone, or jointly with any other person or persons, the said trust monies, stocks, funds, or securities, are or shall be placed or invested; or to the nomination of any new trustee or trustees of the said trust monies, stocks, funds, and securities, without the consent of the said [*grantee*], his executors, administrators, or assigns, thereunto, in writing under his or their hand or hands first had and obtained (*e*):

And that such sums shall be charged on annuity, &c. assigned;

and be raisable under the trusts herebydeclared;

and also under judgment;

and that grantor will not, during continuance of annuity,

consent to the sale, &c. of the premises;

or to the removal of trustees,

or to the nomination of new trustees,

(*e*) [As to the effect of an alienation by a tenant for life upon these powers, *vide post*, Vol. 5, p. 160.]

Nor without such consent as aforesaid, or the order, judgment, or decree of some court of law or equity for that purpose, revoke or countermand all or any of the powers and authorities hereinbefore contained and given to the said [*trustee*], his executors, administrators, and assigns: And also, that in case all or any part of the said sum of [*stock*], three per centum consolidated Bank Annuities, or the said sum of [*lady's portion*] due on the bond and mortgage of the said [*lady's father*], as hereinbefore mentioned, or the produce of the same, or any part thereof, should during the continuance of the annuity of [*annuity granted*], hereby granted, or intended so to be, be invested in the purchase of real estates; *Then* such real estates, instead of being limited to, or to the use of the said [*grantor*], for his life, shall, in the first place, be limited to the use of the said [*trustee*], his executors, administrators, and assigns, for the term of ninety-nine years, determinable on the decease of the said [*grantor*], upon, under, or subject to the same or the like trusts as are hereinbefore declared of and concerning the hereditaments hereby demised, so that the same may be an effectual security for the annuity of [*annuity granted*] hereby granted, during the continuance thereof: And moreover, that he the said [*grantor*] and his assigns, and all and every other persons and person whosoever, lawfully claiming, or to claim, by, from, under, or in trust for him, will and shall at any time or times, and at all times hereafter, at the costs and charges of the said [*grantee*], his executors, administrators, or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, and assurances in the law whatsoever, for further, better, and more absolutely or satisfactorily granting and assuring the annuity of [*annuity granted*] hereby granted, or intended so to be, with such powers and remedies as aforesaid, unto the said [*grantee*], his executors, administrators, and assigns, for the life of the said [*grantor*], in manner aforesaid; and also for assigning or otherwise assuring the annuity of [*annuity assigned*], dividends, interest, and income, hereby assigned or otherwise assured, or intended so to be; and for demising or otherwise assuring the hereditaments hereby charged and demised or otherwise assured, or intended so to be, and every part of the same, with the appurtenances, for all the then residue of the said term of ninety-nine years, determinable as aforesaid; and also for

33. GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

without grantee's consent; nor revoke powers given to trustee;

and that if trust stock, or wife's portion, should be invested in the purchase of real estates;

such real estates shall in the first place be limited to trustee for ninety-nine years, determinable on grantor's decease,

upon the like trusts as are hereinbefore declared of the hereditaments hereby demised;

and for further assurance,

33. GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

surrendering the copyhold hereditaments, hereby covenanted to be surrendered unto or to the use of the said [*trustee*], his heirs, executors, administrators, and assigns, or such other person or persons as the said [*grantee*], his executors, administrators, or assigns, shall direct and appoint, upon the trusts, and for the ends, intents, and purposes aforesaid, and according to the true intent and meaning of these presents; *As* by the said [*grantee*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised or advised and required, and be tendered to be made, done, and executed. AND *it is hereby agreed and declared*, that no execution or executions shall be issued or taken out upon the judgment to be entered up as aforesaid, unless or until the whole or part of some quarterly payment of the said annuity of [*annuity granted*] shall be in arrear by the space of sixty days: AND that from time to time, and at all times hereafter, it shall and may be lawful to and for the said [*grantee*], his executors, administrators, and assigns, to sue out and prosecute one or more writ or writs of execution upon the said judgment, without reviving the same, although and notwithstanding there should not have been any former proceeding upon the said judgment, or there should not have been any proceedings within one year next and immediately preceding the teste or issuing of such writ or writs: AND that the said [*grantor*], his heirs, executors, administrators, or assigns, will not nor shall have, receive, or take any plea, exception, proceedings, or other benefit, from the omission of the said [*grantee*], his executors, administrators, or assigns, to revive the said judgment, or proceed under the same from year to year, and within the space of every year. AND that after the decease of the said [*grantor*], and full payment to the said [*grantee*], his executors, administrators, and assigns, of the said annuity of [*annuity granted*] and all arrears thereof, up to the day of the decease of the said [*grantor*]; and of all such costs, charges, damages, and expenses as aforesaid, the said [*grantee*], his executors, administrators, or assigns, will or shall, on the request and at the costs and charges of the heirs, executors, administrators, or assigns of the said [*grantor*], acknowledge satisfaction upon the record or records of the said judgment, in due form of law; or do any further or other act, matter, or thing, which may be reasonably required, for releasing and extinguishing all right and remedy under the said judg-

that no execution shall be issued on judgment, until some quarterly payment shall be in arrear;

and that it shall not be necessary to revive judgment;

and that grantor will not take advantage of omission to revive judgment.

Declaration that after grantor's decease, and full payment of annuity granted,

and of all costs and damages,

grantee will acknowledge satisfaction on judgment, &c.

33. GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

ment, and all executions thereupon; PROVIDED ALWAYS, that in case the said [*grantor*] or his assigns should at any time be desirous of repurchasing the said annuity of [*annuity granted*], and should give to the said [*grantee*], his executors, administrators, or assigns, one calendar month's notice, in writing, of such his or their desire; and upon the expiration of the said notice, or at any time afterwards, and upon giving one calendar month's such notice as aforesaid, should pay unto the said [*grantee*], his executors, administrators, or assigns, the sum of £——; and also all and every sums and sum of money which shall be then due and owing to the said [*grantee*], his executors, administrators, or assigns, for or on account of the said annuity of [*annuity granted*]; and also a proportional part of the said annuity, up to and inclusive of the day or time of paying the said sum of £——; and should also pay unto the said [*trustee*], his heirs, executors, administrators, and assigns, all and every sums and sum of money which shall be then due to the said [*trustee*], his heirs, executors, administrators, or assigns, for or on account of such costs, charges, and expenses, as shall have been advanced, paid, or incurred by him or them in the execution of the trusts hereby reposed in him and them, or in or about recovering or enforcing the payment of the said annuity when in arrear; *Then*, and in that case, the said [*grantee*], his executors, administrators, or assigns, will or shall accept and take the said sum of £——, as and for the price of repurchase, and in satisfaction or full discharge of the said annuity of [*annuity granted*]: *And* on the request, and at the costs and charges of the said [*grantor*] or his assigns, will or shall deliver up the said bond, or writing obligatory, to be cancelled, and acknowledge satisfaction upon the record of the said judgment, and release the said annuity of [*annuity granted*]; *And* the said [*trustee*], his heirs, executors, administrators, and assigns, subject and without prejudice to any such sales or mortgages as aforesaid, will or shall re-assign to the said [*grantor*] or his assigns the annuity of [*annuity assigned*], dividends, interest, and income hereby assigned or otherwise assured, or intended so to be; and surrender to the said [*grantor*] or his assigns the hereditaments hereby demised or intended so to be; and also surrender to the use of the said [*grantor*] or his assigns the copyhold hereditaments hereby covenanted to be surrendered, in case the same should have been sur-

Proviso, enabling grantor to repurchase annuity granted,

on giving one month's notice,

and paying £——, and all arrears of annuity,

and a proportional part;

and trustee's costs.

On repurchase, grantee to deliver bond to be cancelled;

and acknowledge satisfaction on judgment, and release annuity granted;

and trustee, subject to sales or mortgages, to re-assign to grantor annuity and dividends assigned,

and surrender to grantor hereditaments demised,

33. GRANT, CHARGE, ASSIGNMENT, DEMISE, COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

rendered in the meantime; *Or* otherwise, and at the option of the said [*grantor*], or his assigns, the said [*grantee*], his executors, administrators, and assigns, will or shall assign, transfer, and set over the said bond and warrant of attorney and judgment (if any); And the said [*trustee*], his heirs, executors, administrators, and assigns, will or shall assign the annuity of [*annuity assigned*], dividends, interest, and income, hereby assigned or otherwise assured, or intended so to be; and also the hereditaments hereby demised, or intended so to be; and surrender the copyhold hereditaments hereby covenanted to be surrendered, in case the same should have been previously surrendered, unto such person or persons as the said [*grantor*] or his assigns shall direct or appoint; and upon such trusts, and for such purposes, as he or they shall declare of and concerning the same: *And then* and thenceforth the several covenants and agreements hereinbefore contained for payment of the annuity of [*annuity granted*] hereby granted, and also for surrendering the said copyhold hereditaments, unless previously surrendered, shall be void and of no effect. IN WITNESS &c.

and surrender to grantor copyholds;

or otherwise, at the option of grantor,

grantee to assign, bond, warrant of attorney, and judgment;

and trustee to sign annuity and dividends assigned;

and hereditaments demised, &c. as grantor shall appoint;

and thenceforth covenants to be void.

SCHEDULE of parcels.

THE SCHEDULE REFERRED TO IN THE ABOVE-WRITTEN INDENTURE.

And all other manors, &c. of grantor's father comprised in settlement.

ALL THAT, &c. (*ending as follows:*) AND ALL OTHER the manors, messuages, lands, tithes, and estates, late of the said [*father*], deceased, or of any person or persons in trust for him, in the said county of ——, and which were comprised in the hereinbefore-mentioned indenture of settlement, *Except* the parts thereof only, which have been since sold under the powers contained in the same indenture of settlement for that purpose.

34. GRANT *of an* ANNUITY *for Sixty Years, if a Married Woman should so long live, secured by the Grantor's Covenant, and a* CHARGE *by the Married Woman, on the Rents of an Estate settled to her separate Use for Life* (*a*): *Covenants respecting* INSURANCES *on her Life; and* POWER *for either of them to* REPURCHASE. (*A short Form*).

34. GRANT, AND CHARGE ON MARRIED WOMAN'S SEPARATE ESTATE.

THIS INDENTURE, made &c., BETWEEN [*grantor*], of &c., of the first part; [*married woman*], wife of ——, of &c., of the second part; and [*grantee*], of &c., of the third part; WITNESSETH, that in consideration of £—— of lawful British money, to the said [*grantor*] paid by the said [*grantee*], at or before the execution hereof, at the request of the said [*married woman*], the receipt whereof he the said [*grantor*] doth hereby acknowledge: *He* the said [*grantor*] *doth* grant, bargain, sell, and confirm unto the said [*grantee*], his executors, administrators, and assigns, *One* annuity, or clear yearly sum of £—— of like lawful money, free and clear of and from all taxes and deductions whatsoever; To HAVE, hold, receive, take, and enjoy the said annuity of £——, unto the said [*grantee*], his executors, administrators, and assigns, henceforth during the term of sixty years, if the said [*married woman*] should so long live, to be paid by four equal payments, on the &c. in every year; the first payment to be made on the —— day of —— now next ensuing; and also a proportional part of the said annuity, in the event of the decease of the said [*married woman*], before or between any of the said quarterly days of payment, to be paid immediately after such decease. AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, and also in consideration of five shillings to the said [*married woman*] paid by the said

Parties.

Testatum.

Grant of an annuity.

Habendum for sixty years, if nominee should so long live;

payable quarterly,

with proportional part to nominee's death.

Further testatum.

(*a*) [As to the power of alienation of a *feme coverte* over her separate estate, *vide post*, tit. SETTLEMENT, and as to the vacating of securities for an annuity charged on such property, *vide ante*, p. 116.]

34. GRANT, AND CHARGE ON MARRIED WOMAN'S SEPARATE ESTATE.

[*grantee*], at or before the execution hereof, the receipt whereof is hereby acknowledged; *She* the said [*married woman*], in respect of her separate estate, *doth* hereby grant, declare, and agree, that the said annuity, and all costs, charges, and expenses which shall or may, from time to time, reasonably be incurred in and about recovering and compelling payment thereof; and all sums of money which shall or may become due for or in respect of extra premiums of insurance or otherwise, under or by virtue of these presents, shall henceforth be a charge upon and be issuing and payable by and out of ALL and singular the rents, issues, and profits of *All*, &c.; *Which* hereditaments and premises were by indentures of lease and release, bearing date &c., conveyed by [A. B.] to [*devisor*], the late husband of the said [*married woman*], and to [*trustee to prevent dower*], as his trustee; and by the said [*devisor*], by his last will, bearing date &c., and proved &c., were devised unto and to the use of [*trustees*], and their heirs, during the life of his wife the said [*married woman*], then [*widow name*], upon trust, during her life, to pay the rents, issues, and profits thereof, to his said wife, to her separate use, notwithstanding any future coverture: AND FURTHER, that the said [*trustees*] and their heirs shall henceforth stand, remain, and be seised of, and interested in, the hereditaments so devised, and the rents, issues, and profits thereof, during the said term of sixty years, determinable as aforesaid, *In trust*, in the first place, to pay the said annuity, and all costs, charges, and expenses, and extra premiums of insurance, as aforesaid; and subject thereto, *In trust* for the said [*married woman*], according to the trusts of the said will. AND THE SAID [*grantor*] doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, will or shall pay unto the said [*grantee*], his executors, administrators, or assigns, the said annuity of £——, during the said term of sixty years, determinable as aforesaid, and the said proportional part, immediately on the expiration of forty days from and after the respective days and times hereinbefore limited and appointed for paying the same, unless the said annuity should previously have been paid by or out of the rents, issues, and profits aforesaid, and without any deductions or abatement whatsoever: AND ALSO, that the said

Charge by a woman having a separate estate, of annuity, costs, and extra insurance,

upon rents of parcels,

purchased by her late husband,

and by him devised to trustees during her life, upon trust, for her separate use;

and direction that the trustees shall stand possessed thereof during determinable term,

in trust, to pay the annuity, costs, and extra insurance; and subject thereto, in trust for married woman, according to trusts of will. Covenant by grantor to pay annuity,

unless previously paid out of rents;

that married

34. GRANT, AND CHARGE ON MARRIED WOMAN'S SEPARATE ESTATE.

[*married woman*] shall not do any act or thing whereby or by means whereof any such policy or policies of insurance as may, or shall have been, or hereafter may be, effected upon her life, by or on the behalf of the said [*grantee*], his executors, administrators, and assigns, for any sum not exceeding the sum of £——, shall or may be or become or be liable to be impeached, void, or voidable: AND ALSO, that the said [*married woman*] now, at the time of the sealing and delivery of these presents, hath in herself good right, full power, and lawful and absolute authority, to make the charge and security so by her made as aforesaid: AND ALSO, that she the said [*married woman*], and also the said [*grantor*], his executors and administrators, shall and will at all times hereafter, at their, her, or his own proper costs and charges in the law, and on the request of the said [*grantee*], his executors, administrators, or assigns, make, do, and execute, or cause and procure to be made, done, or executed, all and every further and other lawful and reasonable acts, deeds, things, and assurances in the law whatsoever, for further granting, assuring, and confirming the said annuity, according to the true intent and meaning of these presents; or for enabling him the said [*grantee*], his executors, administrators, or assigns, by and at his or their costs, to effect an insurance or insurances, for his or their benefit, upon the life of the said [*married woman*], not exceeding the amount altogether of £——, or from time to time to renew and keep alive the same; as by him or them, or his or their counsel in the law, shall be advised or required: AND FURTHER, that he the said [*grantor*], his executors or administrators, will or shall, from time to time, pay any extra rate of insurance which shall or may be or become necessary upon or in respect of any such insurance as aforesaid, in the event or by reason of the said [*married woman*] going upon or beyond the seas: AND LASTLY, that the said [*married woman*] was, on the —— day of —— last, of the age of —— years, and no more, and was born at ——, in the county of ——, and now is, and hath been for and during ten days preceding the day of the date of these presents, of insurable health, life, and constitution; and that he the said [*grantor*], his executors, administrators, and assigns, will and shall, whensoever he or they shall be thereunto requested, gratuitously make, or cause to be made, due and sufficient proof, by authenticated certificates, affidavits,

woman shall not do any act whereby policy of insurance on her life may become voidable;

for married woman's title:

for further assurance by married woman and grantor;

or for enabling grantee to effect insurances on married woman's life;

for payment of extra insurance;

for married woman's age and place of birth;

and for authentication thereof by grantor.

34. GRANT, AND CHARGE ON MARRIED WOMAN'S SEPARATE ESTATE.

or other testimonials and evidence, of the truth and correctness of the representations in this declaration contained, to enable the said [*grantee*], his executors, administrators, and assigns, to receive all or any sum or sums which he or they shall or may have insured as aforesaid, upon the life of the said [*married woman*] as aforesaid. PROVIDED *nevertheless*, that in case the said [*grantor*], or the said [*married woman*], or either of them, or the executors or administrators of them or either of them, should at any time or times be minded and desirous of repurchasing the said annuity, and should give to the said [*grantee*], his executors, administrators, or assigns, three calendar months' previous notice in writing of such his, her, or their mind or intention, and immediately upon the expiration of such notice, should pay or cause to be paid to the said [*grantee*], his executors, administrators, or assigns, the full sum of £——, as and for the consideration of the repurchase of the said annuity, together with all arrears thereof, and a proportional part thereof, up to the day of such repurchase, together with all costs, charges, and expenses to be paid or incurred in or about the recovery thereof, and all other sums which shall or may be, or become due or payable under or by virtue of these presents,—*Then*, and thereupon, the said annuity, and all covenants, clauses, matters, and things hereinbefore contained, shall cease and determine. IN WITNESS &c.

Proviso enabling grantor or married woman to repurchase.

35. GRANT, DEMISE OF FREEHOLDS, AND COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

35. GRANT *of an* ANNUITY *for the Grantee's Life, and* DEMISE *of* FREEHOLDS *and* COVENANT *to* SURRENDER COPYHOLDS *to Trustees; with Trusts for Sale, Mortgage, &c. and further secured by* BOND. *The* CONSIDERATION *being a* CONVEYANCE *and Surrender of the Fee of the same Estates* (*a*).

Parties.

THIS INDENTURE, made &c.; BETWEEN [*grantor*], of &c., of the first part; [*grantee*], of &c., of the second part; and [*trustee*], of &c., and [*other trustee*], of &c., of the third

(*a*) [No *ad valorem* duty attaches on this grant.]

35. GRANT, DEMISE OF FREEHOLDS, AND COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

part. WITNESSETH, that in consideration that the freehold lands and hereditaments, intended to be hereinafter demised or otherwise assured, have by indentures of lease and release bearing date respectively the —— and —— days of ——, (the indenture of release being made between the said [*grantee*], of the first part, the said [*grantor*], of the second part, and [*trustee to prevent dower*], of the third part) been conveyed by the said [*grantee*], to uses, and upon trusts, for the benefit of the said [*grantor*], his heirs, appointees, and assigns; and that the copyhold messuages, lands, and hereditaments, hereinafter covenanted to be surrendered, have been, or forthwith are to be, surrendered by the said [*grantee*], to or to the use of the said [*grantor*], his heirs and assigns, for ever; and that such conveyance hath been made, and the said surrender has been, or is to be, subject to an agreement, that an annuity of £——, should be secured by the said [*grantor*] to the said [*grantee*], and his assigns, for his life (*b*), and should be charged on the said messuages, lands, and hereditaments, as is hereinafter mentioned, in addition to a bond of the said [*grantor*], which he hath entered into, to the said [*grantee*], for securing the same annuity (*c*); and also in consideration of ten shillings to the said [*grantor*], already paid, by the said [*grantee*], the receipt whereof is hereby acknowledged; *The* said [*grantor*], for himself, his heirs, executors, and administrators, by these presents *doth* grant, bargain, sell, and confirm; *And* by virtue and in exercise of every power and authority enabling him in this behalf, *doth* direct, limit, and appoint, to the said [*grantee*], and his assigns, ONE annual sum or yearly rent-charge of £—— of lawful British money, to commence from the —— day of —— now last past; and to be yearly issuing, and payable out of, and charged and chargeable upon, *All* and singular the freehold lands and hereditaments intended to be hereinafter demised, or otherwise assured, and every part and parcel of the same, with their rights, members, and appurtenances; TO HAVE, hold, receive, take, and enjoy the said annuity or rent-

Testatum, in consideration of conveyance of freehold lands to grantor to uses to prevent dower,

and covenant to surrender copyhold lands to grantor in fee.

Reference to bond.

Nominal consideration to grantor.

Grant of

annuity,

charged upon lands hereinafter demised.

Habendum to grantee and his assigns for his life;

(*b*) [A memorial of the securities is not necessary, *ante*, p. 107.]

Memorial not necessary.

(*c*) See the form of this bond, *ante*, p. 184.

[A vendor of an estate in consideration of an annuity, is entitled to have it secured on the estate, and by a bond and judgment. *Infra*, tit. PURCHASE-DEEDS.]

35. GRANT, DEMISE OF FREEHOLDS, AND COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

charge of £——, unto the said [*grantee*], and his assigns, during his life. The same annuity or rent-charge to be payable and paid to the said [*grantee*], and his assigns, at or in the dining-hall of the Inner Temple, London, by equal half-yearly payments, on &c., in every year, between the hours of two and four in the afternoon; and without any deduction or abatement whatsoever; the first half-yearly payment to be made on the —— day of —— next; and a proportional part of the said annuity to be paid up to the time of the decease of the said [*grantee*], in case he should die on any other day than one of the said days of payment; and in case he should die before the —— day of next ——, then the said proportion to be computed from the —— day of —— last past. AND the said [*grantor*] doth hereby grant to the said [*grantee*], and his assigns, that from time to time, when and as often as it shall happen that the said annuity or rent-charge of £——, or any half-yearly payment of the same, shall be in arrear or unpaid, in the whole or in part, by the space of fourteen days next over or after any one of the days or times whereon the same is hereinbefore appointed to be paid as aforesaid; it shall be lawful to and for the said [*grantee*], and his assigns, into and upon the hereditaments out of which the said annuity or rent-charge is to be issuing and payable as aforesaid, or into and upon any part thereof, to enter and distrain for the same annuity or rent-charge, and all the arrears thereof. And the distress and distresses then and there found, to detain, manage, sell, and dispose of, in the same manner in all respects, and upon the same terms, as distresses for rents reserved upon leases for years may be, and are, or ought to be managed, sold, and disposed of, and as if the said annuity or rent was a rent reserved upon a lease for years. To the intent that the said [*grantee*], and his assigns, shall thereby, therewith, or otherwise, be fully satisfied and paid the said annuity or rent-charge, and all arrears thereof, and all costs, charges, and expenses to be occasioned by the non-payment thereof, at the days or times hereinbefore appointed for payment of the same. AND FURTHER, that from time to time, when and as often as it shall happen that the said annuity or rent-charge, or any part thereof, shall be in arrear or unpaid by the space of twenty-one days next over or after any one of the said days whereon the same is hereinbefore appointed to be paid as afore-

without any deduction;

with proportional part to his decease.

Power of distress on freehold lands.

Power of entry on freehold lands.

35. GRANT, DEMISE OF FREEHOLDS, AND COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

said; then, and so often, and from time to time, either upon or at any time after the expiration of the said twenty-one days, it shall be lawful to and for the said [*grantee*], and his assigns, (although no formal or legal demand shall have been made of the said annuity or rent-charge), into and upon the lands and hereditaments out of which the said annual sum or yearly rent is to be issuing and payable as aforesaid; or into and upon any part of the same lands and hereditaments, in the name of all the same lands and hereditaments, to enter, and the same to have, hold, and enjoy, and the rents and profits thereof, and of every part thereof, to receive and take, to and for his and their own use and benefit, until he or they shall thereby or therewith, or otherwise, be fully satisfied and paid the said annuity or rent-charge, and all the arrears thereof, and also so much of the same annuity or rent-charge, as from time to time shall incur and grow due during such time as the said [*grantee*], or his assigns, shall continue in the possession of the premises after every such entry as aforesaid; and also all such costs, losses, charges, damages, and expenses, as shall be occasioned by non-payment of the said annuity or rent-charge, or of any part thereof, at the days and times aforesaid. And such possession, when taken, to be without impeachment of waste. AND THIS INDENTURE ALSO WITNESSETH, that for further and more effectually securing the said annuity or rent-charge, and in consideration of ten shillings to the said [*grantor*], already paid by the said [*trustees*], the receipt whereof is hereby acknowledged: *The* said [*grantor*], by the direction of the said [*grantee*], by these presents *doth* grant, bargain, sell, and demise; *And* by virtue and in exercise of every power and authority enabling him in this behalf, *doth* direct, limit, and appoint, unto the said [*trustees*], their executors, administrators, and assigns, ALL THOSE, &c. (*freehold parcels*); *All* which freehold lands and hereditaments, together with the copyhold messuage, lands, and hereditaments, hereinafter covenanted to be surrendered, are now better known by the description contained in the schedule to these presents. AND all [buildings, barns, stables, yards, commons, and common of pasture and of turbary, and other commonable rights, hedges, ditches, fences, mounds, ways, paths, waters, watercourses, liberties, privileges, easements, profits, commodities, advantages, emoluments, and] appurtenances whatsoever, to

Further testatum.

Nominal consideration to grantor by trustees.

By direction of grantee, demise

and appointment,

to trustees,

of freehold parcels.

Reference to modern description in schedule.

General words for farms.

35. GRANT, DEMISE OF FREEHOLDS, AND COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

the said lands and hereditaments, or any of them respectively belonging, or in anywise appertaining, or reputed, held, occupied, or enjoyed, as part, parcel, or member of the same or any of them respectively; To HAVE AND TO HOLD the said freehold lands, hereditaments, and premises, unto the said [*trustees*], their executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during the term or time of 1000 years thence next ensuing, and fully to be complete and ended; without impeachment of or for any manner of waste (*d*): UPON trust for securing to the said [*grantee*], and his assigns, the due and regular payment of the annuity or rent-charge of £—— hereby granted to him and them, and such proportionate part thereof as aforesaid. AND UPON THIS FURTHER TRUST, that in case, and when and as often as the said annuity or rent-charge, or any half-yearly payment thereof, shall be in arrear and unpaid in the whole or in part by the space of forty days next after any one of the days or times hereinbefore appointed for payment thereof; the said [*trustees*], and the survivor of them, his executors, administrators, or assigns, shall, by and out of the rents and profits of the hereditaments comprised in the said term of 1000 years; or by mortgage or sale thereof, or of a competent part thereof, for all or any part of the said term, or by bringing actions against or making distresses upon all and every, or any of the present or future tenants of the same hereditaments and premises, for recovery of the rents then in arrear; or by making entries upon the same hereditaments and premises; or by all and every, or any one or more of the said ways and means; or by any other lawful and reasonable ways and means whatsoever, levy and raise such arrears of the said annuity or rent-charge, as from time to time shall become due and remain unpaid; together with all such damages, costs, charges, and expenses as the said [*grantee*], or his assigns, shall incur, expend, sustain, or be put unto, by reason of the non-payment of the said an-

Habendum to trustees for 1000 years,

upon trust for securing annuity.

And upon trust, if annuity should be in arrear forty days, out of the rents, or by mortgage, &c., to raise arrears and all costs, &c.

Timber.

(*d*) Where an estate "and all woods" upon it are demised for a term (without express words making the termor dispunishable of waste), upon trust, by different specified ways and means, including "felling timber," to raise and pay an annuity when in arrear, *quære*, whether this gives the annuitant any interest in the timber, or operates as a mere personal agreement. See *Davis* v. *The Duke of Marlborough*, 2 Wils. Ch. R. 147: *Fairfield* v. *Weston*, 2 Sim. & St. 96.

35. GRANT, DEMISE OF FREEHOLDS, AND COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

nuity or rent-charge, or any part thereof; together with the costs, charges, and expenses attending the execution of the trusts of the said term of 1000 years. AND UPON THIS FURTHER TRUST, that the said [*trustees*], and the survivor of them, his executors, administrators, or assigns, shall, in the first place, retain and reimburse to and for himself and themselves, the costs, charges, and expenses of and attending the execution of the trusts hereby reposed in him and them. *And* in the next place, shall pay and satisfy to the said [*grantee*], his heirs, executors, administrators, or assigns, all arrears of the said annuity or rent-charge; and all costs, charges, damages, and expenses which he or they shall have incurred, suffered, borne, sustained, and laid out by reason or on account of the non-payment thereof, or in or about recovering and enforcing the payment of the same. AND UPON THIS FURTHER TRUST, that in the meantime, and until the said annuity or rent-charge, or some half-yearly payment thereof, shall be in arrear or unpaid, in the whole, or in part, by the space of forty days next after the time hereby appointed for the payment of the same: and also from time to time, when and as often as all the arrears of the said annuity or rent-charge, and the said costs, charges, damages, and expenses shall be raised, or fully satisfied and paid, the said [*trustees*], and the survivor of them, his executors and administrators, shall permit and suffer the said [*grantor*], his heirs, appointees, or assigns, or other the person or persons who for the time being shall be entitled to the reversion or remainder of the hereditaments comprised in the same term of 1000 years, expectant on the determination of the same term, to receive and take the rents and profits of the same hereditaments and premises to and for his and their own use and benefit. AND UPON THIS FURTHER TRUST, that they the said [*trustees*], and the survivor of them, his executors and administrators, shall from time to time, after paying the said annuity or rent-charge, when and as the same shall become due and payable; and also, after deducting and retaining such costs, charges, damages, and expenses as aforesaid, pay to the said [*grantor*], his heirs, appointees, or assigns, or other person or persons for the time being entitled in reversion as aforesaid, or to whom he or they shall appoint, the money (if any) which from time to time shall remain in the hands of the said [*trustees*], or the survivor of them, his executors or administrators. PROVIDED ALWAYS, that after the decease of the said [*grantee*],

to pay costs;

and arrears of annuity;

until annuity is in arrear forty days;

when all arrears and costs shall be satisfied, trustees to permit grantor to take the rents, &c.;

and upon trust to pay surplus monies to grantor.

Proviso for cesser of term.

35. GRANT, DEMISE OF FREEHOLDS, AND COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

and payment to him and to his executors, administrators, or assigns, of the said annuity or rent-charge, and all the arrears thereof; and also of such proportionate part as aforesaid; and also, after payment of all such costs, charges, damages, and expenses as aforesaid; and also, after full performance or discharge of the trusts of the said term of 1000 years; then and thenceforth the said term of 1000 years, of or in the hereditaments and premises therein comprised, or so much of the same term as shall not be disposed of under the trusts hereby declared concerning the same term, shall cease, and determine, and be void: but without prejudice to any sale, mortgage, or disposition previously made of all or any part of the said hereditaments and premises, for any of the purposes hereinbefore mentioned, in pursuance of the trusts hereinbefore declared concerning the said term. AND *it is declared and agreed*, that the person or persons who shall pay to the said [*trustees*], or the survivor of them, his executors, administrators, or assigns, all or any part of the rents and profits of the hereditaments comprised in the said term of 1000 years; or advance any money upon any sale or sales, or the security of any mortgage or mortgages of the said hereditaments, or otherwise pursuant to the trusts hereinbefore contained, shall not be obliged or required to see to the application of the said rents, profits, and money respectively, or any of them, or that any such receipt or payment, sale, or mortgage, is proper or authorized by these presents; nor be answerable or accountable for the misapplication or non-application of the same rents, profits, and money. *And* that every receipt which shall be given by the said [*trustees*], or the survivor of them, his executors or administrators, for all or any part of the said rents, profits, and money respectively, shall be a good and sufficient acquittance and discharge for the sum and sums of money which shall be therein acknowledged or expressed to be, or to have been, received. AND the said [*grantor*] doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantee*], his heirs and assigns, that he the said [*grantor*], or his heirs, will or shall, as soon as conveniently may be, after he or they shall become tenant or tenants of the copyhold messuages, lands, and hereditaments hereinafter mentioned and covenanted to be surrendered, on the request of the said [*grantee*], or his assigns, and at the costs and charges of the said [*grantor*], his heirs or assigns,

Indemnity to tenants, purchasers, mortgagees, and other persons paying money to trustees.

Trustees' receipts to be sufficient discharges.

Covenant by grantor to surrendercopyhold lands;

at a court to be held for the manor of ——, in the said county of ——, and either in person or by attorney, surrender into the hands of the lord or lords, lady or ladies of the said manor of ——, according to the custom of the said manor, *To the use and behoof* of the said [*trustees*], their heirs and assigns for ever; *Subject nevertheless* to a CONDITION (*e*) to avoid the same surrender, on the due and regular payment of the said annuity or rent-charge of £——, and the said proportional part thereof, according to the true intent and meaning of these presents, ALL THAT, &c. (*copyhold parcels*). *Which* copyhold messuage, lands, and hereditaments, together with the freehold lands and hereditaments hereinbefore described, are now better known by the names and other descriptions contained in the schedule to these presents; *To the intent* that the said [*trustees*], or the survivor of them, or his heirs, when admitted tenants or tenant of the said copyhold messuage, lands, and hereditaments, may be so admitted, To HOLD the same to them or him, their or his heirs and assigns for ever; at the will of the said lord or lords, lady or ladies of the said manor, by copy of court-roll, according to the custom of the said manor; *And* by and under the rents, suits, and services therefor due and of right accustomed to be paid and performed. AND that in the meantime, and until such surrender shall be made, and the said condition shall be broken, and the said [*trustees*], or the survivor of them, or his heirs, shall be admitted tenant or tenants, under and by virtue of the same surrender or surrenders respectively, when the condition shall be broken, the said [*grantor*], and his heirs, will and shall stand and be seised or possessed of the same copyhold messuage, lands, and hereditaments, and every part and parcel of the same, with the appurtenances, *Upon trust* to surrender the same, according to the true intent and meaning of these presents. AND the said [*trustees*], and their heirs, or the survivor of them, and his heirs, when admitted tenants or tenant of the said copyhold messuage, lands, and hereditaments, shall hold the same, *Upon*, under, and subject to the same, or the like trusts, provisions, regulations, declarations, and agreements, as are hereinbefore expressed

35. GRANT, DEMISE OF FREEHOLDS, AND COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

To the use of the trustee in fee;

Subject to condition to avoid same on due payment of annuity.

Copyhold parcels.

Reference to modern description in schedule.

To the intent that trustees may be admitted;

Habendum in fee;

at the will of the lord;

under the rents, &c.

In the meantime grantor to be possessed of copyhold lands.

Upon trust to surrender same;

Upon trusts, &c. by reference to those declared of freeholds.

(*e*) The condition of the surrender may be the same as the condition of the bond, *ante* 1, p. 184, *mutatis mutandis*.

See as to copyhold securities, *ante*, p. 220.

35. GRANT, DEMISE OF FREEHOLDS, AND COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

and declared, or contained, of and concerning the said term of 1000 years in the said freehold lands and hereditaments; or as near thereto as may be, and the nature of the estate of the said [*trustees*], and their heirs, or the survivor of them, and of his heirs, will admit. *But* the said [*grantor*] doth hereby declare and direct, that as between his real and personal representatives, his personal estate shall be the primary fund, the rents of the said freehold lands and hereditaments the secondary fund, and the rents of the said copyhold messuage, lands, and hereditaments the third or ultimate fund, for securing and satisfying the said annuity or rent-charge, when and as the same shall become payable; AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, some or one of them, will or shall, from time to time, pay unto the said [*grantee*], his executors, administrators, or assigns, the said annuity of £——, and also such proportional part thereof as aforesaid, free and clear of and from all taxes, charges, rates and other deductions whatsoever, at the days and times, and in manner and form hereinbefore appointed for the payment thereof, and according to the true intent and meaning of the parties to these presents. AND ALSO that he the said [*grantor*] now hath in himself good right or full power, and lawful and absolute authority, to subject and charge all the said freehold hereditaments and premises, to and with the payment of the said annuity or rent-charge of £——, and the powers and remedies hereby given for compelling and enforcing the payment thereof: AND ALSO, to demise the same hereditaments and premises, with their rights, members, and appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, for the said term of 1000 years: upon the trusts and for the purposes aforesaid, and according to the true intent and meaning of these presents. AND ALSO, that the said freehold and hereditaments and premises, and the copyhold hereditaments and premises hereby covenanted to be surrendered, shall from time to time, during the life of the said [*grantee*], continue and be subject to the payment of the said annuity or rent-charge, and the said trusts and powers and remedies by distress and entry. AND MOREOVER, that he the said [*grantor*], and his heirs, and all and every other

Declaration by grantor, that his personal estate shall be the primary fund, the rents of the freeholds the secondary fund, and the rents of the copyholds the ultimate fund for satisfying annuity.

Covenant for paying annuity for grantee's life:

for title to charge freehold lands with payment of annuity;

to demise freehold lands;

and that lands shall continue subject to payment of annuity.

Covenant for further assurance;

35. GRANT, DEMISE OF FREEHOLDS, AND COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

persons and person whosoever, lawfully claiming or to claim by, from, under, or in trust for him, will and shall, at any time or times, and at all times hereafter, at the costs and charges of the said [*grantee*], or his assigns, make, do, and execute, or cause or procure to be made, done, and executed, all such further and other lawful acts, deeds, and assurances in the law whatsoever, for further, better, and more perfectly, lawfully, and absolutely or satisfactorily granting and assuring the said annuity, with such powers and remedies as aforesaid, unto the said [*grantee*] and his assigns; *And also* for demising or otherwise assuring the said freehold hereditaments and premises, and every part of the same, with the appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, or unto such other person or persons as the said [*grantee*], his executors, administrators, or assigns, shall direct or appoint, for all the then residue of the said term of 1000 years, upon the trusts, and for the ends, intents, and purposes aforesaid, and according to the true intent and meaning of these presents: *And also*, for surrendering the said copyhold hereditaments and premises, to the use of the said [*trustees*], their heirs and assigns, according to the true intent and meaning of these presents: *As* by the said [*grantee*], or his assigns, or his or their counsel in the law, shall be reasonably devised or advised, and required and be tendered to be made, done, and executed. PROVIDED ALWAYS, that the said [*trustees*], and each of them, and the heirs, executors, administrators, and assigns of them, and each of them, shall be charged and chargeable only for such monies as they respectively shall actually receive by virtue of the trusts hereby reposed in them; notwithstanding his or their, or any or either of their giving or signing, or joining in giving or signing, any receipt or receipts, for the sake of conformity. AND shall not be answerable for any banker or other person with whom or in whose hands any part of the said trust monies shall or may be deposited or lodged for safe custody, or otherwise, in the execution of the trusts hereinbefore contained. And shall not be answerable or accountable for any misfortune, loss, or damage, which may happen in the execution of the aforesaid trusts, or in relation thereto, except the same shall happen by or through his or their own wilful default respectively: and then in that case, each person respectively shall singly and alone be answerable for such loss or damage

for better securing annuity;

for demising freeholds;

and for surrendering copyholds.

Indemnity clauses to trustees.

35. GRANT, DEMISE OF FREEHOLDS, AND COVENANT TO SURRENDER COPYHOLDS, TRUSTS FOR SALE, &c.

as shall arise from his or her own default. AND ALSO, that it shall and may be lawful to and for the said [*two trustees*] respectively, and their respective heirs, executors, administrators, and assigns, by and out of the monies which shall come to their respective hands by virtue of the trusts aforesaid, to deduct, retain, and reimburse to and for himself and themselves respectively, all costs, charges, damages, expenses, and fees to counsel for advice, which they or any of them shall and may suffer, sustain, expend, disburse, lay out, be at, or be put unto, in or about the execution of the aforesaid trusts, or in relation thereunto. IN WITNESS &c.

Trustees to reimburse themselves all costs, &c.

Schedule.

THE SCHEDULE TO WHICH THE ABOVE-WRITTEN INDENTURE REFERS.

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36. GRANT AND DEMISE OF FREEHOLD AND LEASEHOLD, ASSIGNMENT OF ATTENDANT TERM, &c.

36. GRANT *of an* ANNUITY *for Ninety-nine years, if the Survivor of Grantee and two Nominees should so long live; charged on Freeholds and Leaseholds for Years:* DEMISE *of the Freeholds by Grant and Appointment, (under Uses to bar Dower), and Demise of the Leaseholds by way of Underlease to a Trustee,* UPON TRUST, *after default in Payment, out of the Rents and Profits, or by demising, mortgaging, or selling, &c., to raise Arrears and Costs:* COVENANT *to* INSURE *against* FIRE, *in Grantee's name:* DEFEAZANCE *on* JUDGMENT: POWER *to* REPURCHASE: *and* ASSIGNMENT *of a* TERM *to a Trustee, to* ATTEND.

Parties.

THIS INDENTURE, made &c., BETWEEN [*grantor*], of &c., of the first part, and [*grantee*], of &c., of the second part; [*annuity trustee*], of &c., of the third part; [*trustee of term*], of the fourth part, and [*assignee of term*], of &c., of the fifth part. (*Recite conveyance to uses, to prevent dower, ut ante,* p. 241. *And recite lease, &c. whereby the grantor is entitled to the leaseholds for the remainder of a term, of which eight years and one quarter were expired on the 25th day of March last, ut ante,* p. 288). AND WHEREAS the said [*grantor*] hath contracted with the said [*grantee*] for the absolute sale to him of an annuity of £——, to be paid to him the

Recital of contract for purchasing an annuity for 99

said [*grantee*], his executors, administrators, and assigns, during the term of ninety-nine years, if the said [*grantee*] and [*nominee*], of &c., and [*other nominee*], of &c., or the survivor of them, should so long live, and to be secured in manner hereinafter mentioned, for the price of £——. And on the treaty for the purchase of the said annuity, it was agreed that all the expenses of preparing and perfecting the securities for the same should be borne by the said [*grantor*]: And whereas, in pursuance and performance of the said agreement on the part of the said [*grantee*], he the said [*grantee*] has this day paid to the said [*grantor*] the sum of [*purchase-money*]. And in pursuance of the said agreement, he the said [*grantor*] hath executed a warrant of attorney, bearing even date with these presents, authorizing certain attornies of her Majesty's Court of —— at Westminster, or any other attorney of the same Court, to confess judgment against him the said [*grantor*] in the said Court of ——, in an action of debt, at the suit of the said [*grantee*], for the sum of [*double the purchase-money*] pounds, for money borrowed and costs of suit: and it is intended and agreed, that judgment shall be immediately entered up thereupon accordingly. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement on the part of the said [*grantor*], and in consideration of the said sum of [*purchase-money*] of lawful British money; *He* the said [*grantor*], by these presents, *doth* give, grant, bargain, sell, and confirm; and also in exercise and execution of the power and authority limited to him the said [*grantor*], as hereinbefore is mentioned, and of every or any other power or authority enabling him in this behalf, direct, limit, and appoint unto the said [*grantee*], his executors, administrators, and assigns, One annuity or clear yearly sum of £—— of lawful British money, to be paid, and payable for and during the term of ninety-nine years, to commence from the day of the date of these presents, if the said [*grantee*] and [*nominees*], or the survivor of them, should so long live; And to be charged and chargeable upon, and yearly issuing, and payable out of, the freehold hereditaments hereinbefore particularly mentioned and comprised in the said indentures of lease and release; and also out of and upon the messuage or tenement and premises mentioned and comprised in the said indenture of lease of the —— day of ——, and out of and upon their

36. GRANT AND DEMISE OF FREEHOLD AND LEASEHOLD, ASSIGNMENT OF ATTENDANT TERM, &c.

years, if either of three persons should so long live.

Recital of payment of consideration-money.

Recital of warrant of attorney for securing annuity when there is no bond.

First testatum.

Grant and appointment by a person having a power over the fee of the freehold lands, under the usual limitations to prevent dower, of

an annuity,

for ninety-nine years,

if the grantee and two nominees, any or either of them, should so long live;

to be charged upon freehold and leasehold lands.

36. GRANT AND DEMISE OF FREEHOLD AND LEASEHOLD, ASSIGNMENT OF ATTENDANT TERM, &c.

respective appurtenances; To HAVE, hold, receive, take, and enjoy the said annuity or yearly sum of £——, unto the said [*grantee*], his executors, administrators, and assigns, during the said term of ninety-nine years, if the said [*grantee and nominees*], or the survivor of them, should so long live: the same to be paid and payable at or in the common dining-hall of Lincoln's Inn, in the county of Middlesex, by equal quarterly payments, on &c., in every year; without any deduction or abatement whatsoever out of the same, for or in respect of any taxes or charges, or otherwise howsoever. The first quarterly payment of the said annuity to be made on the —— day of ——, now next ensuing, if any of them the said [*grantee and nominees*] should be then living: and if the survivor of them, the said [*grantee and nominees*], should depart this life on any other day than any of the said quarterly days of payment, a proportional part of the said annuity to be paid to the executors, administrators, or assigns of the said [*grantee*], immediately after the decease of such survivor, for the time which such survivor shall have lived, of the then current quarter of a year. AND the said [*grantor*] doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant, grant, and agree, with and to the said [*grantee*], her executors, administrators, and assigns; and also, in exercise and execution of every or any power or authority, enabling him in this behalf, direct, limit, and appoint, that if the said annuity, or any part thereof, should be in arrear, and unpaid by the space of twenty-one days next over or after any of the said days or times whereon the same is hereinbefore appointed to be paid as aforesaid: *Then* and in such case, and as often as it shall so happen, it shall be lawful to and for the said [*grantee*], his executors, administrators, and assigns, into and upon the hereditaments and premises hereby charged with the payment of the said annuity, or into or upon any part thereof, to enter and distrain for the same annuity, &c., (*Powers of distress and entry, ut ante*, p. 259). AND THIS INDENTURE ALSO WITNESSETH, that for the considerations aforesaid, and in consideration of the sum of ten shillings, to the said [*grantor*] paid by the said [*annuity trustee*], at or before the sealing and delivery of these presents; the receipt whereof is hereby acknowledged; *He* the said [*grantor*], by the direction of the said [*grantee*], by these presents *doth* grant, bargain, sell, and demise; and also (in exercise and

Habendum, for 99 years, if &c.

payable quarterly.

The first payment to be on &c. if either of the lives be then living:

with a proportional part to the death of the survivor.

Power of distress by the donee of a power.

Second testatum.

Demise of freehold and leasehold lands to a trustee, by a

execution of every or any power or authority, enabling him in this behalf) direct, limit, and appoint, unto the said [*annuity trustee*], his executors, administrators, and assigns, the freehold and leasehold messuages or tenements, lands, hereditaments and premises hereinbefore particularly mentioned, and hereby charged with the payment of the said annuity, or intended so to be, with their and every of their appurtenances; To HAVE AND TO HOLD the said freehold hereditaments and premises, unto the said [*trustee*], his executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during the term of five hundred years, thenceforth; without impeachment of or for any manner of waste. AND TO HAVE AND TO HOLD the leasehold messuage or tenement and premises hereinbefore particularly mentioned, and comprised in the said indenture of lease of the —— day of ——, unto the said [*trustee*], his executors, administrators, and assigns, from the twenty-fifth day of March last, for and during the term of eight years and one quarter of a year wanting ten days (*g*), thenceforth. *Nevertheless*, as to all and singular the said hereditaments and premises; UPON TRUST, that if the said annuity of £——, or any part thereof, should at any time or times be in arrear and unpaid by the space of forty days next after any of the days or times hereinbefore appointed for payment thereof as aforesaid; *Then* and in such case, and when and so often as the same shall so happen, he the said [*trustee*], his executors, administrators, or assigns, shall, by and out of the rents, issues, and profits of the said hereditaments and premises; or by demising, leasing, mortgaging, or selling the same, or any part thereof, for all or any part of the respective terms therein hereby created; or by bringing actions against the tenants or occupiers of the same premises respectively, for the recovery of the rents, issues, and profits thereof; or by all or any of the ways and means aforesaid; or by such other ways and means as to him or them shall seem meet, levy and raise such sum and sums of money as shall be sufficient, or as he or they shall think fit or expedient to raise for paying and satisfying to the said [*grantee*], his executors, administrators, or assigns, the said annuity, or such part thereof as shall be so in arrear and unpaid, and all costs, charges, damages, and expenses whatsoever, which the

36. GRANT AND DEMISE OF FREEHOLD AND LEASEHOLD, ASSIGNMENT OF ATTENDANT TERM, &c.

person having a power over the fee of the freehold lands, under the usual limitations to prevent dower.

Parcels.

Habendum, the freehold lands for 500 years.

And *habendum* the leasehold lands for eight years and one quarter wanting ten days, by way of underlease.

Upon trust, after annuity shall be in arrear forty days, out of the rents and profits, or by demising, mortgaging, or selling, &c. premises, to raise arrears of annuity; and all costs;

(*g*) *Vide ante*, p. 119.

36. GRANT AND DEMISE OF FREEHOLD AND LEASEHOLD, ASSIGNMENT OF ATTENDANT TERM, &c.

said [*grantee*], his executors, administrators, or assigns, or the said [*trustees*], his executors, administrators, or assigns, or any of them, shall or may sustain, expend, or be put to, by reason of the non-payment thereof or otherwise, in the execution of the trusts hereof. AND shall pay and apply the money so to be levied and raised, or a competent part thereof, in or towards payment and satisfaction of the said arrears, costs, charges, and expenses accordingly: *And* pay the surplus or residue thereof (if any) unto the said [*grantor*], his heirs, appointees, executors, administrators, or assigns, for his and their own proper use and benefit. AND UPON FURTHER TRUST, that the said [*trustee*], his executors, administrators, or assigns, shall, from time to time, subject and without prejudice to the trusts hereinbefore declared, permit and suffer the said [*grantor*], his heirs, appointees, executors, administrators, and assigns, to receive and take the rents, issues, and profits of the said hereditaments and premises, for his and their own proper use and benefit. (*Add agreement, that sales and mortgages shall be valid without grantee's concurrence; and that the receipts of trustee shall be good discharges, ut ante,* p. 277). AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his executors, administrators, or assigns, will or shall, from time to time, and at all times during the continuance of the said annuity, at his and their proper costs and charges, insure and keep insured, in the name or names of the said [*grantee*], his executors, administrators, or assigns, in the —— assurance office, or some other well established office for assurance against fire, in London or Westminster, all the messuages or tenements, and premises hereinbefore charged and demised, or intended so to be, or such of them as shall not be sold by virtue of the trusts aforesaid, from loss or damage by fire in the sum of [*the estimated value of the buildings*] at the least, and forthwith deliver the policy or policies of every such assurance unto the said [*grantee*], his executors, administrators, or assigns. AND *it is hereby agreed and declared,* that if the said [*grantor*], his executors or administrators, should at any time, whilst the said annuity shall be payable, and the said messuages or tenements, and premises, shall remain unsold as aforesaid, refuse or neglect to insure the said sum of £—— in the name or names of the said [*grantee*], his executors,

and pay the surplus money to grantor.

And subject to the said trusts, to permit grantor to receive the rents and profits.

Covenant by grantor to insure in grantee's name against fire, and to deliver policies to grantee.

Agreement that if grantor should neglect to insure or to deliver policies, that grantee may insure:

GRANT AND DEMISE OF FREEHOLD AND LEASEHOLD, ASSIGNMENT OF ATTENDANT TERM, &c.

administrators, or assigns, or to deliver the policy or policies of every such assurance unto her or them as aforesaid; then and so often as the same shall happen, it shall and may be lawful for the said [*grantee*], his executors, administrators, or assigns, in like manner to insure and keep insured the said sum of £——, or any less sum, and for such length of time as she or they shall think proper: And that it shall and may be lawful to and for the said [*grantee*], his executors, administrators, or assigns, from time to time, to levy and raise, and pay the costs, charges and expenses of making and keeping on foot such insurances, not exceeding in the whole the sum of £50, by such and the same ways and means, and in such and the same manner, as hereinbefore is provided for raising and paying the said annuity of £——: And that all sums of money which shall be recoverable on any such policy of insurance, shall forthwith be laid out and expended in rebuilding or repairing the premises insured, or such of them as may be destroyed or injured by fire, in order the better to secure the due payment of the said annuity. And the said [*grantor*], for himself, his heirs, executors, and administrators, doth hereby further covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, administrators, or assigns, will or shall pay unto the said [*grantee*], his executors, administrators, or assigns, for and during the said term of ninety-nine years, if the said [*grantee*] and [*nominees*], or the survivor of them, should so long live, the said annuity of £——, clear of all deductions and expenses whatsoever, as and when the same shall become due and payable as aforesaid, by virtue of, and according to the true intent and meaning of these presents. And also that he the said [*grantor*], his executors or administrators, will or shall, at all times during the continuance of the said term of eight years and one quarter of a year wanting ten days, pay the yearly rent, and perform, fulfil, and keep all and every the covenants and agreements in the hereinbefore in part recited indenture of lease of the —— day of ——, — reserved and contained on the part of the tenant or lessee henceforth to be performed: And from the same, and all costs and expenses on account of any breach, neglect, or default of or in payment or performance thereof as aforesaid, will or shall keep indemnified the said [*grantee*], his executors, administrators, and assigns, and his and their lands, tene-

and that grantee or trustee may raise the costs of insurances by same means and ways as annuity.

That monies recoverable on policies shall be expended in rebuilding.

Covenant by grantor to pay an annuity for ninety-nine years, if any or either of three nominees should so long live:

and to pay the rent and perform the covenants of the original lease;

and indemnify grantee therefrom.

36. GRANT AND DEMISE OF FREEHOLD AND LEASEHOLD, ASSIGNMENT OF ATTENDANT TERM, &c.

ments, goods, and chattels respectively. AND that he the said [*grantor*] now hath in himself good right, full power, and lawful and absolute authority to grant and confirm the said annuity of £——: and the said powers and remedies for compelling payment thereof as aforesaid; and to charge the same upon all and singular the said hereditaments and premises; and also to grant, bargain, sell, and demise the said premises unto the said [*trustee*], his executors, administrators, and assigns, for the said several terms of five hundred years, and eight years and one quarter of a year wanting ten days respectively, upon the trusts aforesaid, and according to the true intent and meaning of these presents.

That grantor has title to grant annuity, and to demise freeholds and leaseholds;

AND that all and singular the said freehold hereditaments shall, during the said term of ninety-nine years, if the said [*grantee*] and [*nominee*], or the survivors or survivor of them should so long live, remain, continue, and be charged with and subject to the said annuity or rent-charge; and subject and liable to the distress and distresses, entry and entries of the said [*grantee*], his executors, administrators, and assigns, for recovering the same, and for all costs, charges, and expenses to be occasioned by the non-payment thereof.

that the freeholds shall remain charged with annuity, &c.

AND that the said freehold and leasehold premises respectively, shall and may be held, possessed, occupied, and enjoyed by the said [*trustee*], his executors, administrators, and assigns, for the said several terms of five hundred years and eight years and one quarter of a year wanting ten days respectively, upon the trusts aforesaid, and according to the true intent and meaning of these presents.

That freeholds and leaseholds shall be held upon the trusts aforesaid:

AND that free and clear, and freely and clearly, and absolutely exonerated, and for ever discharged, or by the said [*grantor*], his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all charges and incumbrances whatsoever.

For acquittal and indemnity from incumbrances.

AND FURTHER, that he the said [*grantor*], and all and every other persons and person whosoever, now or hereafter having, or lawfully or equitably claiming any estate, right, title, or interest, legal or equitable, in, to, or out of, the hereditaments and premises hereby charged and granted, bargained, sold, and demised respectively as aforesaid, or any of them, or any part or parts thereof, will and shall, at any time or times hereafter, at the costs and charges of him the said [*grantor*], his heirs, executors, or administrators, make, do, and execute, or cause and procure to be made

For further assurance.

36. GRANT AND DEMISE OF FREEHOLD AND LEASEHOLD, ASSIGNMENT OF ATTENDANT TERM, &c.

done, and executed all such further and other acts, deeds, conveyances and assurances in the law whatsoever, for the further, better, and more effectually charging the said freehold hereditaments with the said annuity or rent-charge, and with such powers and remedies for recovering and enforcing payment thereof as aforesaid; and also for the further, better, and more effectually granting, bargaining, selling, demising, assuring, and confirming the said freehold or leasehold premises respectively, unto the said [*trustee*], his executors, administrators, or assigns, for the residues which shall be then to come and unexpired of the said terms of five hundred years, and eight years and one quarter wanting ten days respectively, upon the trusts aforesaid, according to the true intent and meaning of these presents; *As* by the said [*grantee*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised, or advised and required. (*Add declaration, that agreements, deeds, &c. of trustee shall be valid, whether grantor shall or shall not assent thereto: trustee's receipts to be sufficient discharges: indemnity to persons paying him money, ut ante*, p. 277: *indemnity to trustee, ut ante*, p. 249). AND THIS INDENTURE FURTHER WITNESSETH, *and it is hereby declared and agreed, &c.* (*Add proviso as to judgment; and proviso for acknowledging satisfaction* "after the determination of the said term of ninety-nine years, determinable as aforesaid, and full payment," &c., *ut ante*, p. 328). AND THIS INDENTURE FURTHER WITNESSETH, and the said [*grantee*] doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant and agree with the said [*grantor*], his heirs, executors, administrators, and assigns, that in case the said [*grantor*], his heirs, executors, administrators, or assigns, should be desirous of repurchasing the said annuity of £——, at any time after the —— day of ——, which will be in the year 18—; he the said [*grantee*], his executors, administrators, or assigns, will or shall, at any time after the said —— day of ——, 18—, on receiving of and from the said [*grantor*], his heirs, executors, administrators, or assigns, full payment of the said annuity of £——, and of all arrears thereof, together with a proportional part of the said annuity, (in case such repurchase should be made on any other day than one of the said quarterly days of payment), for the time which shall have elapsed of the then current quarter of a year,

Third testatum.

Proviso as to judgment, &c.

Fourth testatum.

Power to repurchase after a given time, on paying original purchase-money, and giving three months' notice, or paying one quarter's annuity in addition.

36. GRANT AND DEMISE OF FREEHOLD AND LEASEHOLD, ASSIGNMENT OF ATTENDANT TERM, &c.

up to and including the day of such repurchase; and all and every sum and sums of money (if any) which shall be then due, for or on account of any costs, charges, or expenses, occasioned by the non-payment of the same annuity, accept and take, for the repurchase thereof, such sum of money as hereinafter is mentioned, that is to say; if the said [*grantor*], his heirs, executors, administrators, or assigns, should have given the said [*grantee*], his executors, administrators, or assigns, three calendar months' previous notice in writing of his or their intention to make such repurchase as aforesaid, then the sum of [*original purchase-money*]; but if the said [*grantor*], his heirs, executors, administrators, or assigns, should not have given such three calendar months' previous notice in writing of his or their intention to make such repurchase, then and in such last-mentioned case, the sum of [*original purchase-money and one quarter's annuity*]: AND the said [*grantee*], his executors, administrators, or assigns, and the said [*trustee*], his executors, administrators, or assigns, will and shall thereupon, at the proper costs and charges in the law of the said [*grantor*], his heirs, executors, administrators, or assigns, release, assign, or otherwise dispose of the said annuity, and the said hereditaments and premises, and all other securities for the same, unto the said [*grantor*], his heirs, executors, administrators, or assigns, or to such other person or persons as he or they shall in that behalf nominate or appoint.

On repurchase, grantee and trustee to assign annuity and premises and the securities, unto grantor, or as he shall appoint.

Recital of creation of mortgage term;

AND WHEREAS, by indenture bearing date on or about the —— day of ——, 18—, and expressed to be made between [*mortgagor*], of the one part, and [*mortgagee*], of the other part, the said [*mortgagor*] did demise unto the said [*mortgagee*], *All those* the freehold messuages or tenements, lands, and hereditaments hereinbefore particularly mentioned: *To hold* the same unto the said [*mortgagee*], his executors, administrators, and assigns, from the day next before the day of the date thereof, for the term of five hundred years; *subject nevertheless* to a proviso or condition therein contained, for redemption of the said messuages or tenements, lands, and hereditaments, on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, unto the said [*mortgagee*], his executors, administrators, or assigns, of £—— and interest, on the —— day of —— then next.

of default in paying mortgage-money;

AND WHEREAS default was made in payment of the said sum of £—— and interest, on the day appointed for payment thereof by the said indenture.

of assignment

AND WHEREAS, by indenture bearing date the —— day

of ——, 18—, and made between the said [*mortgagee*], of the first part; the said [*mortgagor*], of the second part; [*grantor*], of the third part; and the said [*trustee of term*], of the fourth part; the said [*mortgagee*] did assign the aforesaid hereditaments, unto the said [*trustee of term*], his executors, administrators, and assigns, for the residue of the said term of five hundred years, *In trust* for the said [*grantor*], his heirs, appointees, and assigns, and to attend the reversion of the same premises. NOW THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, and also in consideration of ten shillings to the said [*trustee of term*], already paid by the said [*assignee of term*], the receipt whereof is hereby acknowledged; the said [*trustee*], at the request of the said [*grantor*], and [*grantee*], by these presents *doth* bargain, sell, assign, transfer, and set over unto the said [*assignee*], his executors, administrators, and assigns, ALL THOSE the said freehold messuages or tenements, lands, and hereditaments, and all other the premises hereinbefore described, which are comprised in the said term of five hundred years, created by the said indenture of the —— day of ——, 18—; together with their and every of their rights, members, and appurtenances. AND all the estate, right, title, interest, term, and terms for years yet to come and unexpired, property, possession, benefit, claim, and demand whatsoever, of the said [*trustee*], in, to, or out of the said messuages or tenements, lands, and hereditaments, and every part thereof. TO HAVE AND TO HOLD the said hereditaments and premises unto the said [*assignee*], his executors, administrators, and assigns, henceforth for and during all the rest, residue, and remainder of the last-mentioned term of five hundred years: *Nevertheless* UPON TRUST in the first place, for further and better securing to the said [*grantee*], his executors, administrators, and assigns, the payment of the said annuity of £——; *And* to assign and dispose of the same term accordingly, as the said [*grantee*], his executors, administrators, or assigns, shall direct or appoint: *And* subject thereto, IN TRUST for the said [*grantor*], his heirs, appointees, and assigns; *And* to permit the residue of the said term of five hundred years to wait upon and attend the reversion, freehold, and inheritance of the premises therein comprised, so as to be subservient thereto, and to protect the same from all mesne incumbrances, if any such there be. (*Add a covenant from trustee*

36. GRANT AND DEMISE OF FREEHOLD AND LEASEHOLD, ASSIGNMENT OF ATTENDANT TERM, &c.

of mortgage term, in trust to attend the reversion.

Fifth testatum.

Assignment by trustee to assignee of freehold parcels.

And all the estate, &c.

Habendum for residue of term:

Upon trust for better securing annuity;

and subject thereto in trust for grantor; and to attend the reversion, &c.

36. GRANT AND DEMISE OF FREEHOLD AND LEASEHOLD, ASSIGNMENT OF ATTENDANT TERM, &c.

with assignee, that he hath not incumbered, ut ante, p. 167). IN WITNESS &c. (*h*).

Memorial.

(*h*) Unless the clear annual value of the *freehold* property, charged with the payment of the annuity, be of equal or greater annual value than the annuity granted, so as to be within the exception in the act, *ante*, p. 109, a memorial of the deed must be inrolled. [Indeed it is in general not prudent to rely upon this exception in the act, as incumbrances may have been secretly created by the grantor reducing the annual value below that of the annuity.]

37. GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

37. GRANT *at* Common Law *of an* ANNUITY *for Ninety-nine Years, if the* Grantor *or* Nominees *should so long live, or for the* Life *of the* Grantee; *with powers of* DISTRESS *and* ENTRY; *and* RELEASE *in* Fee: *Or by way of* USE; *with Powers of* DISTRESS *and* ENTRY *by way of use:* TRUSTS FOR SALE, &c., *and Covenant to* SURRENDER COPYHOLDS: POWER TO CUT TIMBER: DECLARATION *that the Judgment shall affect only the Estates charged with the Annuity, and the Person of the Grantor:* APPOINTMENT OF RECEIVER; *or* COVENANT *by prior Mortgagees not to lend any further Sums without Grantee's consent; and* COVENANT *by first Mortgagee, for production of Title Deeds.*

Parties.

THIS INDENTURE, made &c., BETWEEN [*grantor*], of &c., of the first part: [*grantee*], of &c., of the second part; [*trustee*], of &c., of the third part; and [*receiver*], of &c., of the fourth part. WHEREAS &c., (*a*) (*Recite seisin in fee*

Recital of seisin.

PRIOR MORTGAGEES PARTIES.

(*a*) If the estate be previously mortgaged, &c., and it be the agreement that the mortgagees shall not lend any further sums without the grantee's consent, make the first mortgagee a party of the second part, the second mortgagee of the third part, &c., and shortly recite the several mortgagees at the commencement of the deed; and add,

Recital that no further sums are due on mortgages.

"AND WHEREAS no further sum or sums is or are due from the said [*grantor*] to the said [*mortgagees*] respectively, or any or one of them, than the several sums hereinbefore

in possession or remainder, seisin of copyholds, contract for purchase of annuity bond, warrant of attorney). NOW THIS INDENTURE WITNESSETH, &c., he the said [*grantor*], by these presents *doth* give, grant, bargain, sell, and confirm unto the said [*grantee*], his executors, administrators, and assigns, ONE annuity, &c., (*determinable on grantor's death, ante,* pp. 258 *and* 319; *determinable on two nominees' death, ante,* p. 273; *three, ante,* p. 349; *for the grantee's life, ante,* p. 339). AND the said [*grantor*] doth hereby grant to the said [*grantee*], his executors, administrators, and assigns, that &c., (*add powers of distress and entry at common law* (*b*), *determinable on grantor's death, ante,* p. 259, *subject to a previous life estate, ante,* p. 320; *determinable on nominee's death, ante,* p. 350; *for the grantee's life, ante,* p. 340). AND THIS INDENTURE FURTHER WITNESSETH, that &c. (*add release in fee from the grantor to the trustee, ut ante,* p. 243). TO THE USE of the said [*trustee*], his heirs and assigns, for ever; UPON THE TRUSTS, &c., (*add trusts, ut ante,* p. 247). AND the said [*grantor*] doth hereby, for himself, his heirs, executors, and administrators (*c*), covenant and agree with the said [*grantee*], his executors, administrators, and assigns,

37. GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

First testatum.

Grant of annuity.

Powers of distress and entry at common law.

Second testatum.

Release in fee to trustee.

Covenant to surrender copyholds.

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respectively mentioned, and such interest thereon respectively as aforesaid, and they have respectively agreed to enter into the covenants hereinafter contained. AND WHEREAS the said [*grantor*] is seised of or entitled to the inheritance in fee-simple in possession, of and in the aforesaid messuages, tenements, lands, and premises, with the appurtenances; subject to the aforesaid charges by way of mortgage thereon: and also subject to and charged with an annuity or rentcharge of £——, payable to [*mother*], of &c., widow, the mother of the said [*grantor*]; and which annuity is secured by an indenture bearing date &c., and made between &c.

Recital of seisin in fee, subject to prior mortgages,

and subject to a prior annuity.

(*b*) If the powers of distress and entry are intended to take effect by way of use, the conveyance must precede the powers, *ut ante,* p. 245. The difference between a power of entry under the statute of uses, and a power of entry at common law, is stated *ante,* p. 46.

Power of distress and entry by way of use.

(*c*) If the copyhold lands belong to the grantor's wife, make her a party with him, and make additions to this covenant, and to the condition, *ut ante,* pp. 229, 230. But if the surrender has been previously made, *vide* p. 219.

Covenant to surrender wife's copyholds.

37. GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

that he the said [*grantor*], or his heirs, will or shall, on the request of the said [*grantee*], his executors, administrators, or assigns, but at the costs and charges of the said [*grantor*], his heirs or assigns, (*add covenant to surrender copyholds to the trustee, ut ante*, p. 344) (*d*).

Covenant to pay annuity, and for title, &c.

Power to cut timber.

(*d*) If it be the agreement, add,

"PROVIDED ALWAYS, that if the said annuity of £——, so secured as aforesaid, or any part thereof, should at any time be in arrear or unpaid for the space of —— calendar months next after any of the quarterly days of payment hereinbefore mentioned, then and in every such case, it shall be lawful for the said [*trustee*], his (*or* and [*other trustee*], or the survivor of them, or the) heirs or assigns (of such survivor), at the request and by the direction of the said [*grantee*], his executors, administrators, or assigns, to fell and cut down, or cause to be felled or cut down, any of the timber which shall be for the time being standing in or upon the estates hereby charged and released * as aforesaid, or any part thereof; and to sell

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COPYHOLD.

* If the special custom of the manor warrant the felling of trees on the copyholds, add,

"and covenanted to be surrendered."

Under a special custom, a copyholder may cut down and sell trees.

It is a good custom, that a copyholder in fee may cut down trees and sell them at his pleasure. *Glasscock* v. *Peche*, 1 Roll. Abr. 560, pl. 16: *Rockey* v. *Huggins*, Cro. Car. 221; Jones, 245; 4 Leon. 239; Dal. 8. Noy, 2. *S. C.* [See *Blackett* v. *Lowes*, 2 Mau. & S. 494: *Rex* v. *Tower*, 4 Mau. & S. 162: *Le Fleming* v. *Simpson*, 2 Man. & Ry. 169.] So, where by the custom of the manor a copyholder for life may name his successor, and so *in perpetuum*, such a copyholder for life may cut down and sell timber trees, for he is *quasi* a copyholder in fee. *Rawles* v. *Mason*, 1 Roll. Abr. 560, pl. 18: *Rowles* v. *Masters*, cited Cro. Car. 221: *Rolls* v. *Mason*, 1 Brownl. 132; 2 Id. 87, 192; Noy, 2. But if an ordinary copyholder for life cut down and sell trees, it is a forfeiture of his life estate; for a custom that a copyholder, not having any further interest than for life, may cut down and sell trees grown on his copyhold, has been adjudged void and unreasonable. *Roake* v. *Huggins*, 1 Roll. Abr. 560, pl. 17: *Rockey* v. *Huggins*, Cro. Car. 221: *Powell* v. *Peacock*, Cro. Jac. 29: *S. C.* cited 2 Brownl. 89; 2 Noy: *Earl of Northumberland* v. *Wheeler*, 1 Buls. 158; 3 Buls. 81: *Anon.* 11 Mod. 68. So, where a copyhold estate is granted to a man and his heirs for three lives, and he has no power of compelling the lord to renew on the falling in of the lives, the copyholder cannot cut timber growing on the

37. GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

AND THE SAID [*grantor*], for himself, &c., (*add covenant for paying annuity, for title, &c., ut ante*, pp. 346, 250; *proviso* and dispose of the same for such price or prices in money, and in such manner, as to the trustees or trustee for the time being shall appear expedient, and thereby to levy and raise so much money as shall be adequate to pay so much of the said annuity of £——, as shall be for the time being in arrear, and all costs, charges, and expenses to be sustained and incurred by such trustees or trustee for the time being, in the exercise of this present power, or to be incurred by the said [*grantee*], his executors, administrators, or assigns, by reason or in consequence of such non-payment as last aforesaid. AND *it is hereby declared*, that the said [*trustee*] (and [*other trustee*]), or the trustees or trustee for the time being, exercising this present power, shall pay and apply the money so to be levied and raised as last aforesaid, in answering and satisfying the purposes for which the same is so authorized to be raised as aforesaid: *And* shall pay any surplus which there may happen to be of such money, after answering and satisfying the purposes aforesaid, unto the said [*grantee*], his executors, administrators, or assigns."

Money to be raised by selling timber to be applied in paying annuity and costs:

and surplus to be paid to grantor.

And add after "aforesaid," *ante*, p. 249, twelfth line from end,

"or of any timber or other trees to be sold in pursuance of the power hereinafter contained."

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estate. *Mardiner* v. *Elliott*, 2 T. R. 746. But where a copyholder of inheritance having power by custom to cut timber, surrendered to the use of his will, and devised to A. for life, without impeachment of waste, with remainders over; and A. upon coming into possession cut down timber: though there was no instance, in fact, of a copyholder for life in the manor cutting timber; yet it was held that the right being annexed to the copyhold fee and inheritance, the copyholder in fee, in carving out his estate, may make a tenant for life dispunishable of waste, and that at any rate the lord cannot enter upon the estate of the copyholder for life as for a forfeiture upon his cutting timber; for the injury, if any, is not to the lord, but to the remainderman of the copyhold inheritance. *Denn* d. *Joddrell* v. *Johnson*, 10 East, 266. See further as to the rights of lords of manors and copyhold tenants, in relation to timber, Gilb. Ten. 237, &c. Watk. Ed.; Fisher on Copyholds, 98, &c. 1st Ed.; 113, &c. 2nd Ed.; 1 Watk. Cop. [45], [332]; Scriven on Copyholds, 473, 2nd Ed.: *Grey* v. *Duke of Northumberland*, 17 Ves. 282: *Whitechurch* v. *Holworthy*, 19 Ves. 213; 4 Mau. & S. 340. [As to a mortgagee's right to cut timber, &c., *vide infra*, Vol. 5, p. 313.]

37. GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

as to judgment (*e*); *and power to repurchase*). (*g*) AND

(*e*) If it be the agreement, add, after agreement that grantor will not take advantage of omission to revive judgment,

Declaration that judgment shall affect only the estates charged with annuity, and the grantor's person.

"PROVIDED ALWAYS, and particularly (each of them) the said [*grantee*], (and [*other grantee*]), for himself, his heirs, executors, and administrators, (but so far only as relates to his and their own acts and deeds, and the acts and deeds of any person or persons acting under or on behalf of him or them), doth hereby covenant and agree with the said [*grantor*], his heirs, executors, administrators, and assigns, that no property, chattels, estate, or effects whatsoever or wheresoever, of or belonging to the said [*grantee*], his heirs, executors, or administrators, or wherein he the said [*grantee*] hath (*or*, they the said [*grantees*] have) an interest, other than and except the hereditaments and premises hereinbefore mentioned to be hereby released, (and assigned respectively), shall be charged in equity or otherwise, or at any time or times be extended, taken in execution, or otherwise affected, under any execution or executions, to be issued or taken out upon or by virtue of the said judgment (*or*, judgments, or either of them); it being the true intent and meaning of the parties to these presents, that the hereditaments and premises, hereinbefore mentioned to be hereby released (and assigned) as aforesaid, and the person of the said [*grantor*] shall alone be subject or liable to any execution or executions upon or by virtue of the said judgment (*or*, judgments, or either of them)."

PRIOR MORTGAGEES PARTIES.

(*g*) If the premises be previously mortgaged, omit the appointment of a receiver; and if it be the agreement, say,

Covenant by prior mortgagees not to lend further sums without grantee's consent.

"AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and performance of the aforesaid agreement in this behalf, and in consideration of the premises, the said [*first mortgagees*], for themselves severally and respectively, and for their respective heirs, executors, and administrators, do hereby severally and respectively covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that they the said [*mortgagees*] respectively, will not, during the continuance of the said annuity of £——, so secured as aforesaid, advance or lend to the said [*grantor*], his executors, administrators, or assigns, any further sum or sums of money upon the security of the

[WHEREAS (*h*) upon the treaty for the purchase of the said aforesaid messuages, tenements, lands, and premises, or of any part thereof, without the consent in writing of the said [*grantee*], his executors, administrators, or assigns. AND FURTHER, the said [*first mortgagee*] doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that he the said [*first mortgagee*], his heirs, executors, administrators, and assigns, will and shall from time to time, and at all times, during the continuance of the aforesaid annuity of £——, (unless prevented by fire, or some other inevitable accident), upon every reasonable request, and at the costs and charges in the law, of the said [*grantee*], his executors, administrators, or assigns, produce and shew, or cause to be produced and shewn, unto the said [*grantee*], his executors, administrators, or assigns, or to any trustees or trustee for the time being of these presents, or to his or their, or any or either of their counsel, attornies, solicitors, or agents, or at any trial or hearing in any court of law or equity, or upon every other reasonable occasion, all and singular, or any or either of the deeds, instruments, and writings mentioned and specified in the schedule hereunder written, or hereunto annexed: *And* will and shall, (unless so prevented as aforesaid, at the like request, costs, and charges of the said [*grantee*], his executors, administrators, and assigns, permit and suffer any abstract or abstracts, copy or copies, to be made and taken, of all or any, or either of the said deeds, instruments, and writings: *And* keep and preserve the same safe, unobliterated, and uncancelled. IN WITNESS &c.

37. GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

Covenant by first mortgagee for production of title deeds;

to permit abstracts and copies to be made;

and to keep originals safely.

THE SCHEDULE TO WHICH THE ABOVE-WRITTEN INDENTURE REFERS."

(*h*) The receiver is sometimes appointed by a separate deed (of which a form is given, *post*), in order to save the expense of a counterpart of the grant of the annuity, as it would not in some instances be prudent for the grantee to risk the loss of the grant by entrusting it with the receiver. This, perhaps, is a very nice precaution, as there is in fact no necessity for entrusting the receiver with the grant; for if the grantee himself, or any other person, were to shew the deed to the tenants, that would be a sufficient authority for them to pay the rents to the receiver. The appointment of a receiver in large annuity or mortgage transactions

RECEIVER BY SEPARATE DEED.

37. GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

annuity of £——, it was agreed, that for securing the due and regular payment thereof, the said [*receiver*] should be appointed receiver of the rents and profits of the hereditaments and premises hereinbefore particularly mentioned, and hereby charged and released, and covenanted to be surrendered as aforesaid, upon the terms, stipulations, and agreements hereinafter contained. NOW THEREFORE] THIS INDENTURE FURTHER WITNESSETH, that [in pursuance of the said agreement, and] for the considerations hereinbefore expressed, they the said [*grantor*] and [*trustee*] (*i*), on the nomination and at the request of the said [*grantee*], by these presents *do*, and each of them *doth*, constitute and appoint the said [*receiver*], receiver and agent, from time to time, in the names of them the said [*grantor*] and [*trustee*], or in the name of either of them, to ask, demand, collect, and receive ALL and every the rents and profits of ALL and singular the messuages, tenements, lands, and premises hereinbefore particularly mentioned, and hereby charged and released, and covenanted to be surrendered as aforesaid, of and from the present and future tenants and occupiers thereof respectively, as and when the same shall from time to time become due and payable: *And* in case of the non-payment of the said rents and profits, or any

Recital of agreement to appoint receiver.

Third testatum.

Appointment of receiver of rents.

Power of action, distress, &c.

Unless the reversion be in a receiver, he cannot distrain, &c. in his own name.

(*i*) If the appointment be in a demise, the person to whom the term is granted should join in the appointment, because he has the immediate legal estate in reversion. In modern printed books of precedents there is a common error in this respect; for after the grantor or mortgagor has parted with the immediate legal estate in reversion, he alone, by forms in those books, appoints a receiver of the rents, with power to distrain, &c.; but such an appointment is of very little utility, for a distress made under it could not be supported. Under such an appointment as the above the receiver cannot distrain, &c. in his own name, because he has no estate in the land. *Pitt* v. *Snowdon*, 3 Atk. 750. The distress should be made by the receiver as the attorney of the grantor and trustee. But to enable the receiver to distrain in his own name, either before or after the decease of the persons appointing, the premises should be demised to him, as in a form *infra*. [*Vide ante*, p. 76.]

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is very desirable, as it generally is the means of securing the payments before the time the receiver is authorized to act; for not in one case out of fifty does the receiver ever act. When he is appointed by a separate deed, the grantee keeps that deed also, until it becomes necessary, and he wishes the receiver to commence the execution of his office, at which time the deed of appointment is delivered to him.

37. GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

of them, to take and use such lawful remedies for recovering and obtaining payment thereof, or any part thereof, by action, suit, distress, or otherwise, as shall be thought necessary: *And further*, to do, perform, and execute all other matters and things needful and requisite for the collecting and receiving of the said rents and profits, and every part thereof, as fully and effectually, to all intents and purposes, as they the said [*grantor*] and [*trustee*], or either of them, could or might do.

and to do all other requisite acts.

Direction to tenants to pay rents to receiver:

And the said [*grantor*], [*grantee*], and [*trustee*] do, and each of them doth, hereby order and direct all and every the tenants and occupiers of the said messuages, tenements, lands, and premises, to pay unto the said [*receiver*] all and every the rents and profits thereof for the purposes hereinafter mentioned: *And* do, and each of them doth, hereby declare that his receipts shall be good and sufficient discharges to such tenants or occupiers for such rents and profits as they shall respectively pay to him.

his receipts to be sufficient discharges.

Declaration that receiver shall out of rents

And *it is hereby agreed and declared*, that the said [*receiver*] shall from time to time pay and apply the rents and profits which he shall receive by virtue of these presents, in manner following; that is to say, shall, in the first place, pay thereout all taxes, rates, assessments, and impositions which now are or hereafter may be taxed, rated, charged, assessed, or imposed on the said messuages, tenements, lands, and premises, or any of them, or on the owner of the same premises, for or in respect thereof; together with the expenses of all necessary repairs thereof which ought to be done by the landlord: *And also* shall retain and deduct to and for himself thereout (five) pounds per centum upon the gross rents which he shall actually receive as aforesaid, as a compensation for his time and trouble in acting as receiver as aforesaid: *And* in the next place, shall pay and satisfy the said [*grantee*], his executors, administrators, and assigns, the said annuity of £——, as and when the same shall from time to time become due and payable, according to the true intent and meaning of these presents: *And lastly*, shall pay unto the said [*grantor*], his heirs, executors, or administrators (*k*), or as he or they shall order or direct, all the clear residue or

pay all taxes, &c. and expenses of repairs;

retain for himself 5*l.* per cent. on rents received:

pay annuity to grantee:

and pay to grantor the residue.

(*k*) *Æquitas sequitur legem;* Cas. temp. Talb. 44, 51; therefore, the surplus of such rents of inheritance as become payable at any time before the day preceding the grantor's death, will belong to his personal representatives; but if the grantor die before the rent becomes payable, or on the day on which it is to be paid, before midnight, the heir will

Rents payable in grantor's life belong to his executor; but those afterwards, to his heir.

37. GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

surplus of the rents and profits of the said messuages, tene-

be entitled to the surplus of the rent. *Duppa* v. *Mayo*, 1 Saund. 287; and Wms. n. (17): *Rockingham* v. *Oxenden*, Salk. 578: *Cutting* v. *Derby*, 2 W. Bla. 1077; Co. Litt. 202. a. (1); 3 Bac. Abr. 63: *Executors, &c.* (H) 3; 6 Id. 23, *Rent*, (H). [*Norris* v. *Harrison*, 2 Madd. 269.]

[Mr. Coote, in his Treatise on the Law of Landlord and Tenant, p. 273, after citing the authorities at common law, deduces from them the following rules:—

Whether the personal representatives of a tenant in fee simple or in tail, are entitled to an apportioned part of the rents.

1. "Where tenant in fee makes a lease, reserving rent on a particular day, and dies upon that day before midnight, his heir or devisee, and not his executor, shall have the rent."

2. "Where tenant in tail dies under similar circumstances, leaving issue, having made a lease pursuant to the statute 32 Hen. 8, c. 28, the issue in tail, and not his executor, shall have the rent."

3. "If tenant for life make a lease under a power, and die under the like circumstances, the remainderman, and not the executor, shall have the rent."]

[And he observes, that "the statutes 11 Geo. 2, c. 19, and 4 & 5 Will. 4, c. 12, apply to none of these cases; because the lease is not determined by the death of the lessor, or of the person or persons for whose life or lives such lessor was entitled." The learned writer adds, that the stat. 4 & 5 Will. 4, c. 12, does not seem to apply to cases in which the lease was not made by the party having the determinable estate.]

[Mr. Hayes (1 Introd. Conv. 337, 5th Ed.) says, that the first two positions above cited are strictly accurate, because in each instance the estate of the lessor devolves as an entire and unbroken inheritance upon the heir, general or special, and consequently there is no opportunity for applying the adjusting equity of the statute. "Indeed," he adds, "the principle, if admitted, might with equal reason be extended to cases of conflicting claims arising in the lifetime of the owner." The third rule cited from Mr. Coote's work cannot, he conceives, be maintained; for the rent continues, while the interest of the party determines.]

[The enactments of the statutes 11 Geo. 2, c. 19, and 4 & 5 Will. 4, c. 22, are stated *infra*, Vol. 4, pp. 339, 342. The preamble of the latter act, after reciting the statute of Geo. 2, proceeds:—"And whereas doubts have been entertained whether the provisions of the said act apply to every case in which the interests of tenants determine on the death of the person by whom such interests have been created and on the death of any life or lives for which such person was entitled to the lands demised, although every such case is within the mischief intended to have been remedied and prevented by the said act; and it is therefore desirable that such doubts should be removed by a declaratory law: and whereas by law *rents*, annuities, and other payments, due at fixed or stated periods, are not apportionable, (unless express provision be made for the purpose), from which it often happens that persons (*and their representatives*) whose *income* is wholly or principally derived from these sources, by the determination *thereof* before the period of payment arrives, *are deprived of means to satisfy just demands;* and *other evils* arise from such rents, annuities, and other payments not being apportionable."]

ments, lands, and premises which shall from time to time remain, after answering the several purposes aforesaid, or

37. GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

[The second part of the preamble is clearly large enough to include rents-service, (which, indeed, are expressly mentioned in the enacting part of the act), and it does not speak of the determination of the *estate* of persons entitled to rents, in the reversion in respect of which such rents may be payable. It only speaks of the determination of the income of such persons, *or of their representatives*, and so far seems to include the case of the death of a tenant in fee-simple of lands leased at a rent; for at that moment the rents already due, and those in the course of accruer, would, if the statute did not apply, devolve upon different classes of representatives. In the case of a tenant in fee-simple, the particular evil recited in the preamble may not exist, as the rent in the hands of the heir would be assets; though it is to be observed that there is a considerable difference in point of convenient administration between legal assets in the hands of executors, and equitable assets, which can only be reached through a court of equity, and which may belong to an infant heir. The preamble, however, refers generally to other evils, and thus leaves full effect to the enacting part of the statute. Among those evils may have been contemplated the disappointment of legatees, claiming under a will not duly attested for affecting real estate, or not containing a charge of legacies on the real estate. We have now to consider the enacting parts of the statute. The first section (which is retrospective) is merely directed to the removal of the doubts which existed as to the effect of the statute of Geo. 2. The second section enacts, that all *rents-service* reserved on any lease by a tenant in fee, or for any life-interest, or by any lease granted under any power, (and which leases shall have been granted after the passing of this act), and all rent-charges and other rents, annuities, pensions, dividends, moduses, compositions, and all other payments of every description, in the United Kingdom of Great Britain and Ireland, made payable or becoming due at fixed periods, &c., shall be apportioned, so and in such manner, that, *on the death of any person interested* in any such rents, &c., *or* in the estate, fund, office, or benefice from or in respect of which the same shall be issuing or derived, *or* on the *determination* by any *other* means whatsoever *of the interest of any such person*, he or she, or his or her executors, administrators, or assigns, shall be entitled to a proportion of such rents, &c., according to the time which shall have elapsed from the commencement or last period of payment thereof respectively, (as the case may be), including the day of the death of such person, *or* of the determination of his or her interest."]

Apportionment.

[The words in the above section, "or in the determination by any *other* means of the interest of any such person," have been thought to control the effect of the preceding general reference to the death of any person interested in the rent, and to confine the meaning of those words to a death by which the interest (*i. e.* the estate) of such person does not in a technical sense continue, and to exclude the death of a person entitled in fee-simple or in tail, because, in such case, the estate or interest of the party dying, both in the reversion and in the rent which

37. GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

such of them as shall be in a state of actual performance. AND THE SAID [*receiver*] doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantee*], his executors, administrators, and assigns, and also severally with the said [*grantor*], his heirs, executors, and administrators, that he the said [*receiver*], will from time to time, so long as he shall continue to be the collector or receiver of the aforesaid rents and profits, truly and punctually pay and apply, or cause to be paid and applied, in manner and for the intents and purposes aforesaid, all such sums of money as shall be collected or received by him, by virtue of or under the aforesaid power or authority.

Covenant by receiver to apply rents accordingly.

Covenant by grantor not to revoke power to receiver, or impede the execution of his office:

AND THE SAID [*grantor*] doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantee*], his executors and administrators (*l*), that he the said [*grantor*], will not, without the previous consent in writing of the said [*grantee*], his executors, administrators, or assigns, revoke the powers or authorities hereby given to the said [*receiver*], or to be given to any such future receiver as hereinafter is mentioned, or any of them; or do or suffer to be done, any act or thing to lessen, or in any manner affect the same, or impede the execution thereof, during the continuance of the said annuity of £——: *And also*, that

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is annexed to it, does not determine, but continues in his heir. On the other hand it is said, that the wording of the subsequent part of the clause is not sufficient to control the general meaning of the word death, and that even were it otherwise, the words "determination of interest" are to be taken in their popular, and not in the strict feudal sense above referred to. If the construction contended for by Mr. Hayes is to prevail, it must of course apply to rents reserved on leases by tenants in tail within the enabling statutes, and in such cases the particular evils referred to in the preamble to the act undoubtedly exist. The point is one of great nicety and importance, and different opinions, it is understood, prevail in the profession respecting it.]

[After what has been said it will appear that the opinion of the learned writer, above referred to, that the statute 4 & 5 Will. 4, c. 12, does not apply to cases in which the lease was not made by the party having the determinable estate, cannot be supported. The second section is expressly directed to such cases.]

(*l*) This clause, being usually inserted, had better be retained; but it does not appear that the first part of it is necessary, any farther than as being the foundation of an action for breach of covenant, in case the grantor should, by a revocation, attempt to destroy the receiver's authority.

37. GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

in case the said [*receiver*], or any future receiver to be appointed as hereinafter is mentioned, should die or refuse, or become incapable to collect and receive the rents and profits of the said messuages, tenements, lands and premises, or should misbehave himself in the confidence hereby in him reposed during the continuance of the said annuity, *Then*, and in any of the said cases, he the said [*grantor*] will join with the said [*grantee*], his executors, administrators, or assigns, in removing the said [*receiver*], or any such future receiver, from his said employment; and will duly constitute and appoint such other fit person in his stead, as the said [*grantee*] his executors, administrators, or assigns, shall from time to time nominate or approve, to collect, receive, and pay the said rents and profits of the said messuages, tenements, lands, and premises upon and for the trusts and purposes hereinbefore declared thereof; and so from time to time when and as often as the like case shall happen during the continuance of the said annuity: *And* in case the said [*grantor*] should refuse or neglect so to do, for the space of three calendar months next after the death, incapacity, or misbehaviour of the said [*receiver*], or any such future receiver as aforesaid; *Then*, and in every such case, it shall be lawful to and for the said [*grantee*], his executors, administrators, or assigns, if he or they shall think fit, without the consent or concurrence of the said [*grantor*], to constitute and appoint some fit person to collect, receive, and pay the said rents and profits, upon the trusts and for the purposes aforesaid, with such reasonable salary (for his trouble and expense) as he the said [*grantee*], his executors, administrators, or assigns, shall think proper, not exceeding (one shilling) in the pound upon the gross rental of the said premises, for the time being. PROVIDED ALWAYS, that the said [*grantee*], his executors, administrators, or assigns, shall not in anywise be charged with, or answerable for any loss, misapplication, or non-application of the said rents and profits, or any part thereof, by reason of any default, neglect, or breach of trust in the said [*receiver*], or any future collector or receiver to be appointed as aforesaid: *But*, that all such loss, misapplication, or non-application, and every receiver's salary, shall be wholly borne and sustained by the said [*grantor*], his heirs, executors, or administrators. PROVIDED ALSO, that the said [*receiver*], or any receiver so to be appointed as hereinbefore is mentioned, shall not in any-

to join in appointing new receiver:

if grantor neglect, grantee alone may appoint receiver.

Grantee not to be answerable for loss or default of receiver but same, with receiver's salary, to be borne by grantor.

Receiver not to act until annuity be in arrear 30 days.

37. GRANT, RELEASE IN FEE, APPOINTMENT OF RECEIVER, &c.

wise exercise the powers or authorities hereinbefore mentioned, or any of them, until one half-yearly (*or* quarterly) payment of the said annuity shall be in arrear for the space of thirty days or more, next after the same shall become payable, any thing hereinbefore contained to the contrary thereof in any wise notwithstanding. [PROVIDED LASTLY (*m*) that the powers and authorities hereinbefore given to the said [*receiver*], or to be given to any such future receiver as hereinbefore is mentioned, shall not prevent, or be construed to restrain the said [*grantee*], his executors, administrators, or assigns, from suing for, recovering, or compelling payment of the said annuity, or any part thereof, or from using or exercising all or any of the powers or remedies hereinbefore given, limited, or reserved to him or them for enforcing such payment, or for obtaining possession of the said messuages, tenements, lands, and premises, so charged therewith as aforesaid, or any part thereof; *And also* shall not prevent, or be construed to restrain the said [*trustee*], his heirs or assigns, from executing or exercising all or any of the trusts, powers, or authorities hereinbefore reposed, given, limited, or reserved, to him or them.] IN WITNESS &c.

Proviso that appointment of receiver shall not preclude grantee from exercising any of his remedies;

nor trustee from executing the trusts.

(*m*) When the receiver is appointed by the same deed, the above proviso is not usually inserted; but even in that case it seems prudent to retain it in order to prevent any misunderstanding.

38. GRANT AND UNDERLEASE.

38. GRANT *of an* ANNUITY *by a Lessee for Ninety-nine Years, determinable on the Death of a Nominee or Nominees; or by a Lessee for Life or Lives; or by a Tenant for Life under a Settlement or Will;* UNDERLEASE (*in order to retain the Freehold Reversion, or to prevent liability to the Rents, &c.*), UPON TRUSTS *for securing the Annuity; and Covenants, &c.*

Parties.

THIS INDENTURE, made &c., BETWEEN [*grantor*], of &c., of the first part; and [*grantee*], of &c., of the other part. WHEREAS, &c. (*Recite lease for years, ut ante,* p. 270, *or* p. 288; *and if so, assignment, ut ante,* p. 271, *or* p. 289; *or*

Recitals as to leases for *years*.

will or intestacy of lessee, ut ante, p. 136 (*a*). *Recite contract for purchase, and bond and warrant of attorney, ut ante,* 38. GRANT AND UNDERLEASE.

(*a*) If it be a lease for lives, perfected by livery of seisin, say,

BY LESSEE FOR LIVES.

"WHEREAS by indenture bearing date on or about &c., and expressed to be made between the dean and chapter of the cathedral church of ——, of one part; and the [*lessee*], of &c., (*or* the said [*grantor*]), of the other part; for the consideration therein mentioned, the said dean and chapter *did* demise and lease unto the said [*lessee*], his heirs and assigns, *All those* messuages, &c., situate and being &c., with their appurtenances: *To hold* unto the said [*lessee*], his heirs and assigns, from the day next before the day of the date thereof, for and during the lives of [*three nominees*], of &c., and the lives and life of the survivors and survivor of them: *At and under* the yearly rent of £——; and subject to several covenants, provisoes, and agreements therein contained, on the part of the said [*lessee*], his heirs and assigns, to be observed and performed: *Which* indenture of lease was afterwards perfected by livery of seisin, a memorandum whereof is thereon indorsed. AND WHEREAS the said [*lessee*] died intestate, on or about the —— day of ——, leaving the said [*grantor*], his eldest (*or* only) son, (*or* brother, &c.), and heir at law, [who thereupon became seised of the said messuages, &c. for the residue of the said estate therein."]

Recital of a lease for lives perfected by livery of seisin.

Recital of lessee's intestacy, and seisin of his heir.

If it be a lease for lives by lease and release, say,

"WHEREAS by indentures of lease and release, the release bearing date on or about &c., and being expressed to be made between [*lessor*], of &c., of the one part; and [*lessee*] of &c., of the other; for the considerations therein mentioned, the [*lessor*] *did* grant, demise, and release unto the said [*lessee*], his heirs and assigns, *All*" &c.

Recital of a lease for lives by indentures of lease and release.

If it be a lease for lives created under a power, say,

"WHEREAS by indenture bearing date on or about &c., and expressed to be made between the most noble (John) Marquis ——, of the county of ——, of the one part; and [*lessee*], of &c., of the other part; for the considerations therein mentioned, the said Marquis, by virtue and in exercise of the power or authority therein mentioned and particularly referred to, and of all other powers and authorities

Recital of a lease for lives created under a power.

38. GRANT AND UNDERLEASE.

p. 318; *if there be no bond, ut ante*, p. 272). NOW THIS INDENTURE WITNESSETH, that &c. (*grant of annuity*

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enabling him thereunto, *did* limit and appoint, demise and lease unto the said [*lessee*], his heirs and assigns, *All*" &c.

Livery, or something tantamount to it, necessary on granting a lease for lives of lands in possession; but not when the lease is granted under a power in a conveyance to uses.

On leases of lands in possession for lives from ecclesiastical and other persons, deriving their effect from the principles of the common law, livery of seisin, or something tantamount to it, is necessary; such as a lease for a year at common law, and a release in enlargement for the lives, after an actual entry by the lessee; or a bargain and sale for a year under the Statute of Uses, and a release in enlargement for the lives. But a lease of lands in possession for lives, under a power deriving its effect from the Statute of Uses, may be created in the mode prescribed by the power, without any of the above-mentioned ceremonies. *Saunders* v. *Owen*, 12 Mod. 201; 2 Salk. 467: *Wigson* v. *Garret*, 2 Lev. 149. The reason is, the lease, or, more correctly speaking, the appointment, takes effect by way of limitation of the use out of the original seisin of the feoffees or releasees to uses: and it operates by way of shifting use *pro tanto*. It is on that principle the lease continues, notwithstanding the determination of the estate of the person who created it. But if it took effect out of his interest, it would determine with his estate.

If the lessee died intestate, and it be the case, say,

Recital of lessee's intestacy, and seisin of vendor and wife in her right.

"AND WHEREAS the said [*lessee*] died intestate on or about the —— day of ——, leaving [*A.*] the wife of [*vendor*], of &c., his only child and heir at law; [and thereupon the said [*vendor*], and [*A.*] his wife, in right of the said [*A.*], became seised of the said messuages, &c. for the residue of the said estate therein.]"*

If the premises were devised, say,

Recital of a devise of an estate *pour autre vie*.

"AND WHEREAS the said [*lessee*], by his last will, [duly executed and attested as by law was then required† for the devise of freehold lands, and] bearing date on or about the —— day of ——, 18—; and, after the decease of the said [*lessee*], and on or about the —— day of ——, duly proved in the Prerogative Court of the Archbishop of Canterbury, gave and devised *All* his estate and interest in the said messuages, tenements, lands, and premises, to his daughter [*A.*],

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* [It is not generally proper to state in the recitals what is an obvious legal consequence from facts already recited.]

† [Three witnesses were requisite: 29 Car. 2, c. 3, s. 12. If the will was made after the year 1837, there should be no allusion to the mode of execution; for, unless it is duly executed for all purposes, it is no will.]

by grantor, ut ante, p. 273; *power of distress* (*b*) *and entry by the grantor, ut ante,* p. 350, &c., *mutatis mutandis,* 38. GRANT AND UNDERLEASE.

(*b*) If the term be demised to a trustee, a power of distress would be absolutely requisite, the property being leasehold; *vide ante,* p. 40; and, although the demise be made to the grantee himself, whereby he would have the immediate legal estate, and thereby be entitled to distrain for any rents incident to the reversion, *vide infra,* vol. 5, p. 359; yet a power of distress should be inserted, to enable him to distrain *for the annuity.* As to the persons liable to a distress for an annuity or rent-charge, *vide ante,* p. 30. Power of distress should be invariably inserted in a grant of an annuity out of leaseholds.

the wife of [*vendor*], of &c., and to her heirs and assigns (*or* the heirs of her body, with remainder to the right heirs of the said [*lessee*])."

A fine or recovery was not necessary to bar a *quasi* entail of an estate *pour autre vie;* but that when a married woman was seised of such an estate, either absolutely or *quasi* in tail, a fine was requisite in order to convey it: therefore, if it be the case, say, A fine requisite to convey a married woman's estate *pour autre vie.*

"And whereas by indentures of lease and release, bearing date respectively on or about &c., the indenture of release being expressed to be made between the said [*vendor*] and [*A.*] his wife, of the one part; and the said [*grantor*], of the other part; and by means of a fine sur conuzance de droit come ceo, &c., with proclamations levied by the said [*vendor*] and [*A.*] his wife, to the said [*grantor*], in or as of —— Term then last past; and also of a declaration of the uses of that fine, contained in the said indenture of release, *The* said messuages, tenements, lands, and premises were conveyed, limited, and assured to the said [*grantor*], his heirs and assigns, for and during the natural lives of the said [*nominees*], and the lives and life of the survivors and survivor of them: *Subject* nevertheless to the payment, observance, and performance of the rents, covenants, conditions, and agreements in the said indenture of lease reserved and contained, and on the part of the lessee, his heirs and assigns, to be thenceforth paid, observed, and performed." Recital of conveyance of married woman's estate *pour autre vie* by lease, release, and fine.

Sometimes a lease and release were also taken when it was requisite to levy a fine of lands, as in the above recital; but a fine and declaration of the uses was alone a sufficient conveyance, as well of any estate for life, as of an estate in fee; therefore, if the lands were conveyed by fine alone, say, Lease and release unnecessary when there was a fine.

"Whereas by means of a fine sur concesserunt (*or,* sur conuzance de droit come ceo, &c.), levied by the said [*vendor*], Recital of conveyance of an estate *pour au-*

38. GRANT AND UNDERLEASE.

ending thus:) such possession, when taken, to be without impeachment of waste, so far as the said [*grantor*] can grant that exemption. AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, and for better securing the due payment of the said annuity of £—— (*c*), *he* the said [*grantor*] by these presents *doth* grant, bargain, sell, and demise unto the said [*grantee*], his executors, administrators, and assigns, ALL THOSE the messuages, tenements, lands, and premises hereinbefore particularly mentioned, and hereby charged with the payment of the said annuity or yearly sum of £——, or intended so to be, with their and every of their appurtenances (*d*): *Toge-*

Demise of leasehold by way of underlease.

Parcels.

Demise to trustee.

(*c*) If the premises be demised to a trustee, there may be a nominal consideration, &c., *ut ante*, p. 350.

(*d*) The clause of "All the estate," &c. is highly improper in a demise. *Vide infra*, Vol. 4, p. 319.

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tre vie by fine and declaration of the use, without a lease and release.

and [*A.*] his wife, to the said [*grantor*], in or as of —— Term, in the —— year of the reign of his late Majesty King William the Fourth; and also of a declaration of the uses thereof, contained in an indenture bearing date on or about the —— day of ——- 18—, and expressed to be made between the said [*vendor*] and [*A.*] his wife, of the one part; and the said [*grantor*], of the other part; *The* said messuages, &c. were conveyed," &c., *ut supra.*

If the conveyance of the married woman's estate was made after the abolition of fines and recoveries, the recital may be in this form:—

"WHEREAS by indentures of lease and release, bearing date &c., the release being expressed to be made between the said [*vendor*] and [*wife*] his wife of the one part; and the said [*grantee*], of the other part; and duly acknowledged by the said [*wife*]; the said messuages," &c.

BY TENANT FOR LIFE.

Recital of an estate for life under a settlement or will.

If the form in the text be used where the grantor is tenant for life under a settlement or will, and he wishes to retain the freehold reversion for his life; or the grantee prefers having a chattel interest rather than the freehold estate,—recite the settlement or will, *ut ante*, pp. 2, 253, *infra*, p. 376.

When a tenant for life, with powers of leasing, &c., charges an annuity on his life estate, or mortgages or sells it, some gentlemen have supposed it requisite, in order to preserve his powers, that he should not part with his whole estate, but only demise it for a term of years, determinable on his death: as to this, *vide infra*, Vol. 5, p. 160.

ther with the said indenture of lease and assignment (*e*). To HAVE AND TO HOLD the said messuages, tenements, lands, and all and singular other the premises hereby demised, or otherwise assured, or intended so to be, with their and every of their appurtenances, unto the said [*grantee*], his executors, administrators, and assigns, henceforth for and during (*g*) all the rest, residue, and remainder now to come and unexpired of the said term of —— years, in and by the above-recited indenture of lease granted as aforesaid, wanting ten days: *Nevertheless* UPON THE TRUSTS, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, and agreements hereinafter expressed and contained of and concerning the same; that is to say, UPON TRUST, &c. (*Add trusts, covenants, &c., ut ante*, 276, 351, &c. *mutatis mutandis; saying,* "the messuages, tenements, lands, and premises hereby demised, or otherwise assured, or intended so to be:" "for the rest, residue, and remainder of the said term of —— years, wanting ten days;" *or if it be for years determinable on death,* "the said term of ninety-nine years determinable as aforesaid.") IN WITNESS &c.

38. GRANT AND UNDERLEASE.

With lease and assignment.

Habendum for residue of term wanting ten days.

Upon trusts for securing annuity.

(*e*) If the demise be made by a tenant for life under a deed or will, he is entitled to the custody of the title-deeds; and as such a demise as the above conveys his whole interest, excepting a nominal reversion, the grantee should either have the deeds delivered to him, or deposited in the hands of a third person. [But being a termor only, he is not entitled to the deeds without an express grant: *vide post*, Vol. 5, p. 406.]

A grantee of a tenant for life should have the title deeds in his power.

(*g*) If the original lease be for ninety-nine years, if a nominee or nominees should so long live, say,

UNDERLEASE BY LESSEE FOR NINETY-NINE YEARS, IF &c.

"for and during and unto the full end and term of ninety-eight years, if the said [*nominee*] (*or* [*nominees*] (any) or one of them) should happen so long to live."

If the original lease be for a life or lives absolute, say,

UNDERLEASE BY LESSEE FOR LIVES.

"for and during and unto the full end and term of ninety-nine years, if the said [*nominee*] (*or* [*nominees*] (any) or one of them) should happen so long to live."

If it be a demise by a tenant for life, say,

DEMISE BY TENANT FOR LIFE.

"for and during and unto the full end and term of ninety-nine years, if the said [*grantor*] should happen so long to live."

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

39. GRANT *by successive Tenants for Life, of* TWO ANNUITIES *to* TWO *Persons; the First for the Life of the survivor of the Grantors; the other for the Life of one of them: collaterally secured by distinct joint and several Bonds, and Warrants of Attorney to confess Judgments on each of the Bonds in* England *and* Antigua; *and charged on a* PLANTATION IN ANTIGUA, SUBJECT *to a* MORTGAGE, *and Agreement that the Mortgagees shall receive the Consignments, and out of the Produce, after paying an Annuity, secured thereout to the Grantors by the Bond of the Mortgagees, retain the residue in liquidation of their Mortgage Debt:* DEMISE *to a Trustee for Ninety-nine Years, if either of the Grantors should so long live,* UPON TRUSTS, *out of the Rents and Profits, or by Mortgage, or Sale, &c., to levy and pay Arrears to Grantees, without priority.* ASSIGNMENT *to the Trustee of the Mortgagees' Bond, for paying a yearly Sum to the Grantors,* UPON *the same* TRUSTS. COVENANT *by Grantors to employ Mortgagees as Consignees, and in Case of their Deaths, &c., to appoint others to be approved by the Grantees; that new Consignees shall execute a similar Bond to that assigned, to be also assigned to the Trustee.* COVENANT *to appear at* INSURANCE OFFICES, *and to pay additional Premiums for going abroad:* POWER TO REPURCHASE *either Annuity: and* POWER OF ATTORNEY *to acknowledge the Deed in Antigua, in order for it to be registered, and to indorse or annex Schedules describing the Lands charged. Variation where the Annuities are granted for Years determinable.*

Parties.

THIS INDENTURE, made &c., BETWEEN [*grantor*] the elder, of &c., and [*grantor*] the younger, of &c., of the first part; [*first grantee*], of &c., of the second part; [*second grantee*], of &c., of the third part; and [*trustee*], of &c., of the fourth part. WHEREAS under and by virtue of the last will of [*testator*], deceased, formerly of the island of Antigua, esquire, bearing date on or about the —— day of ——, and

Recital, that under a will grantor is seised for life of plant-

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

duly executed and attested (*a*) for the devise of lands of inheritance, and proved on or about the &c., in the Prerogative Court of the Archbishop of Canterbury, the said [*grantor*] the elder is seised for his life, at law or in equity, of the plantation and premises hereinafter mentioned and described, with the appurtenances; *With* remainder to the said [*grantor*] the younger, for his life: *Subject* to a mortgage made by the said [*grantor*] the elder, and [*grantor*] the younger, to [*two mortgagees*], both of ——, in the city of London, merchants and copartners, of the same plantation and premises, for securing £—— and interest: *And subject* to an agreement that the said [*two mortgagees*] shall yearly and every year, whilst the said mortgage debt remains a charge on the said plantation and premises, receive the whole of the consignments from the said plantation, and out of the produce thereof, (after paying to the said [*grantor*] the elder, and [*grantor*] the younger, certain yearly sums, in the proportions therein mentioned), retain the residue of the produce of the same consignments, in liquidation of the said mortgage debt, and interest, until the same shall be fully repaid and discharged; and shall also be employed to receive the consignments of the said plantation for five years, after the said principal monies and interest shall have been discharged (*b*), or to some such effect. AND WHEREAS the said [*mortgagees*], by their bond or obligation in writing, bearing date on or about the —— day of —— instant, became jointly and severally bound unto the said [*grantor*] the elder, and [*grantor*] the younger, in the sum of £——: *And* the said bond is conditioned to be void, if the said [*mortgagees*], or either of them, or the heirs, executors, or administrators of them or either of them, should yearly, and every year, out of the sums or produce which from time to time shall, under or by virtue of certain trusts or agreements in the said bond recited, and hereinbefore mentioned, to be payable to the said [*grantors*], or either of them, retain and take one clear yearly sum of £——, and

ation, charged with remainder for life to other grantor;

subject to a mortgage:

and subject to an agreement, during mortgage, that mortgagees shall receive consignments, and out of produce (after paying grantors certain yearly sums) retain residue in liquidation of mortgage debt; and that mortgagees shall be employed to receive consignments for five years after principal and interest shall be paid;

of a bond from mortgagees to grantors, for paying to grantors, or the survivor, out of the produce, a yearly sum.

(*a*) *Vide* Act of Assembly of Antigua, 26 Geo. 3, No. 438, sect. 3, &c., *post*, as to the ceremonies requisite for Devises of Lands, &c. in Antigua.

(*b*) [It seems doubtful, whether a covenant to continue a mortgagee as consignee, after payment of the debt, is valid. *Vide infra*, Vol. 5, p. 398.]

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

notwithstanding the said trusts and agreements or any of them, pay the same yearly sum unto the said [*grantors*], or to the survivor of them, and their or his assigns, by quarterly payments, on the —— day of ——, &c., in every year, or as soon after as there shall be produce in hand applicable to that purpose, pursuant to the trusts or agreements in the said bond recited, or any of them. The said yearly sum of £—— to be taken, during the joint lives of the said [*grantors*], from the sums or produce payable to them respectively, in proportion to the sums payable to them respectively, and after the death of one of them to be deducted and taken from and out of the sum or produce payable to the survivor of them. And the first quarterly payment of the said yearly sum of £—— to become due on the —— day of —— next, if the said [*grantors*], or either of them, should be living at that time, and there should be a fund or produce in hand applicable for that purpose; or otherwise, as soon afterwards as such fund or produce shall be in hand. And in the event of the death of the survivor of them, the said [*grantors*], between or in the interval of any one of the said quarterly days of payment, and either before or after the said —— day of —— next, should also pay unto the executors, administrators, or assigns, or the survivor of them the said [*grantors*], out of the sums of money and produce payable to both or either of them the said [*grantor*] the elder, and [*grantor*] the younger respectively, under or by virtue of the said trusts and agreements, such part of the said yearly sum of £——, as shall be in proportion to the time or number of days, which, inclusive of the day of the decease of the survivor of them, the said [*grantors*], shall have elapsed, prior to the death of such survivor, and after the day of payment next immediately preceding that event. And should make the payment of such proportional part of the said yearly sum of £—— as soon after the decease of the survivor of the said [*grantors*], as demand shall be made thereof by the executors, administrators, or assigns, of the survivor of the said [*grantors*], and there shall be produce in hand applicable to that purpose. And should make the payments of the said yearly sum of £——, and such proportional part thereof as aforesaid, free and clear of and from all deductions on any account whatsoever. And the same payments to be, and be accepted, in part of the yearly or other sums and produce

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

payable to the said [*grantors*], and each of them, out of the yearly sums or produce applicable as in the said bond is mentioned. AND WHEREAS the said [*grantors*] have contracted with the said *first* [*grantee*], to grant to him, his executors, administrators, and assigns, an annuity of [*first annuity*] of lawful (*c*) British money (*d*), for the several lives of the said [*grantors*], and the life of the longest liver of them: and the true consideration to be given for the said annuity is the sum of £——. AND WHEREAS the said [*grantors*] have also contracted with the said [*second* [*grantee*], to grant to him, his executors, administrators, and assigns, an annuity of [*second annuity*], of like lawful money (*e*), for the life of the said [*grantor*] the younger; and the true consideration to be given for the said annuity of [*second annuity*] is the sum of £——. AND WHEREAS, for further securing the payment of the said annuity of [*first annuity*], the said [*grantors*] have, by their joint and several bond, or writing obligatory, under their hands and seals, bearing even date with these presents, become bound to the said [*first grantee*], his executors, administrators, and assigns, in the sum of [*double the consideration-money for first annuity*]; *subject* to a condition for making the same bond void on payment to the said [*first grantee*], his executors, administrators, or assigns, of the said annuity of [*first*

Recital of contract for purchasing first annuity.

Recital of contract for purchasing second annuity.

Recital of joint and several bond of grantors for securing first annuity.

(*c*) [Where a contract on the face of it purports to be made out of or relating to matters out of the United Kingdom, there is a reason for specifying the currency with reference to which the contract is framed. But in all other cases this is quite superfluous. See *Saunders* v. *Drake*, 2 Atk. 465.]

(*d*) "For and during the term of ninety-nine years, if the said [*grantors*], or either of them, should so long live: and the true" &c.

FOR YEARS DETERMINABLE ON DEATH.

[The precaution, founded on the common-law doctrine of non-occupancy of estates lying in grant, of limiting an annuity *pour autre vie*, intended to devolve upon executors, by way of grant for years determinable with the life of *cestui que vie*, which was recommended by Mr. Bythewood in the first Edition of this work, is, according to the decisions stated *ante*, p. 10, unnecessary in the above instance; because the 12th sect. of the English statute, 29 Car. 2, c. 3, (stated *ante*, p. 9) is also the law of Antigua: Act of Assembly of Antigua, 31 Geo. 3, No. 475, sect. 102; excepting that wills are to be executed according to the Act of Assembly of Antigua, 26 Geo. 3, No. 438, sect. 3, &c.]

(*e*) "For and during the term of ninety-nine years, if the said [*grantor*] the younger should so long live; and" &c.

FOR YEARS DETERMINABLE ON DEATH.

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

annuity], by quarterly payments, during the (*g*) lives of the said [*grantors*], and the life of the survivor of them: and in case the survivor of the said [*grantors*] should die between any two of the said quarterly days of payment, then also of a proportional part of the same annuity, at the times and in manner in the said condition and hereinafter mentioned. AND WHEREAS (*similar recital as to second annuity*). AND as a further security for the payment of the said annuity of [*first annuity*], the said [*grantors*] have by a writing under their hands and seals (*h*), also bearing even date with these presents, authorized [*attornies*], gentlemen, attornies of her Majesty's Court of Common Pleas at Westminster, jointly and severally, or any other attorney of that Court, by confession or otherwise, to suffer judgment to be entered up against them in the same Court, in an action of debt, upon the second above-mentioned bond, at the suit of the said [*first grantee*], his executors or administrators, for the sum of [*double the consideration-money for first annuity*], and costs of suit. AND the said [*grantors*] have, by a certain other writing under their hands and seals, also bearing even date with these presents, authorized [*attornies*], esquires (*i*),

Recital of warrant of attorney from grantors, for entering up judgment in the Common Pleas at Westminster on the bond for securing the first annuity;

of warrant of attorney for entering up judgment in the

FOR YEARS DETERMINABLE ON DEATH.

(*g*) "Term of ninety-nine years, if the said [*grantors*], or either of them, should so long live: and" &c.

(*h*) [As to the advantages of *several* warrants of attorney, *vide post*, Vol. 5, p. 54.]

Attornies in some of the colonies are called *esquires*, because they are both counsel and attornies.

(*i*) As barristers in England are called esquires *, the attornies in all the colonies, excepting Jamaica and Barbadoes, are also called esquires; because the departments of counsel and attorney are there united. In Jamaica and Barbadoes, where the departments of counsel and attorney are distinct, the attornies are described, as in England, *gentlemen*, in all legal proceedings.

Inconvenience of the union of both branches.

The union of these two branches of counsel and attorney has been productive of much inconvenience; for the practical part has so much employed the attention of the colonial advocates, that few of them have leisure to acquire any considerable degree of knowledge. (Stoke on the Colonies, 269).

Different qualifications to practise in the colonies.

The law practitioners in all the colonies, excepting Jamaica and Barbadoes, are of three sorts; first, gentlemen who have been called to the bar at the Inns of Court in London, or at the King's Inns in Dublin, and who are of course admitted to practice on producing certificates of

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* *Vide* note *infra*, under APPOINTMENT OF GAMEKEEPERS, "Who are esquires."

attornies of the Court of Common Pleas, (*or* Queen's Bench) (or any other Court of record), in the island of Antigua,

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

their having been called: secondly, those who have served clerkships in Great Britain, Ireland, or the colonies; and, thirdly, those who through interest are admitted to the bar without any such previous qualification, and who (according to the phrase of the country) are said to *turn lawyers**. In Jamaica and Barbadoes, the advocates must have been called to the bar in England or Ireland; but, even in these two islands, it is a usual practice for counsel to communicate immediately with clients, without the intervention of an attorney, and generally to act much in the same manner as some provincial counsel do in England, and as most of the advocates do at Aberdeen. Although the act, 7 & 8 Will. 3, c. 24, requiring practitioners of the law to take the oaths of allegiance and supremacy, and to subscribe the declaration against popery, and the act, 31 Geo. 3, c. 32, providing another declaration and oath for Roman Catholics, do not either of them extend to the colonies, yet persons who would not subscribe the declaration against popery have been refused permission to practice the law there. *Sed vide*, as to Catholicism, Butl. n. Co. Litt. 391. a. IV. 5.

Common Pleas of the island of Antigua, for securing the first annuity.

Of all the barristers who have practised in the colonies and afterwards returned to England, few have attempted to practise in the courts here. For most of the questions that arise in the colonies are founded in litigation, and not in intricacy; and, as the gentlemen of the bar in general go there at an early period in life, before they have attained any considerable share of knowledge, and as order and decorum are not properly attended to in the courts there, it is not in their power to gain much beneficial experience, or to add to their stock of legal learning. Many of the judges in the colonies not having enjoyed the benefits of a liberal education, and not having been regularly bred to the profession of the law, the advocates are generally their superiors in literary acquirements; and he who has the greatest fluency may sometimes be considered as the ablest lawyer. In England, Scotland, and Ireland, the pleader has, in respect to the persons addressed, the simplest and the easiest task of all orators; the judges to whom he addresses his oration being commonly men of the same rank, of similar education, and not differing greatly in respect of studies or attainments. (Campbell's Philosophy of Rhetorick, Book I. Ch. X. sect. ii. Vol. 1, p. 222, Ed. 1816.)

Colonial barristers rarely practise in England afterwards.

* No person is permitted to plead, or practise the law in Antigua, or give advice in any law matter whatsoever, for gain or reward, until he has, with the approbation of the Court of Common Pleas there, qualified himself in the same Court, by taking the oaths required by act of Parliament to be taken by persons in offices or places of trust, and another oath to act honestly; Act of Assembly, 31 Geo. 3, No. 475, s. 8: or to draw, in the island, any conveyance of land, or of any estate, right, or interest therein, for any fee, present, or award, until he has so qualified himself; Act of Assembly, 53 Geo. 3, No. 643: under a penalty of fifty pounds for each offence.

Qualification to practise in Antigua.

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

jointly and severally, or any other attorney of the same Court, by confession or otherwise, to suffer judgment to be entered up against them in the last-mentioned Court, in an action of debt, upon the secondly above-mentioned bond, at the suit of the said [*first grantee*], his executors or administrators, for the sum of [*double the consideration-money for the first annuity*], and costs of suit. AND (*similar recital as to the second annuity*). AND judgments are to be forthwith entered up against the said [*grantors*], under the authority of the said several warrants of attorney. AND upon the treaty for the sale and purchase of the said several annuities of [*first annuity*] and [*second annuity*], it was agreed, that the same should be further secured by the several provisions hereinafter contained. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement with the said [*first grantee*]; and in consideration of the said sum of £—— of lawful British money by the said [*first grantee*] paid to the said [*grantors*], before the execution of these presents; the receipt whereof the said [*grantors*] do, and each of them doth hereby acknowledge; and thereof, and therefrom, and of and from every part thereof, do, and each of them doth by these presents acquit, release, and for ever discharge the said [*first grantee*], his heirs, executors, administrators, and assigns, and every one of them; *The* said [*grantors*] by these presents *do*, and each of them *Doth*, give, grant, and confirm unto the said [*first grantee*], his executors, administrators, and assigns, ONE annuity or clear yearly sum of [*first annuity*], of lawful British money; to be charged, and chargeable upon, and issuing, payable, had, received, and taken from, and out of, ALL THAT plantation and estate, called ——, with the messuages, buildings, lands, tenements, cattle, stock, implements, utensils, and other things, upon, or belonging to the same, or any part thereof; and certain premises called ——, with the appurtenances, situated in the parish of ——, in the division of ——, in the island of Antigua. *And also* upon, from, and out of all messuages, tenements, edifices, erections, buildings, houses, and storehouses, sugar-houses, boiling-houses, curing-houses, still-houses, stills, and kilns, erected, built, standing, or being, or to be erected, built, standing, or being in, or upon the said plantation, land, ground, hereditaments, and premises, every or any part thereof, with their and every of their rights,

Judgments to be forthwith entered.

Both annuities to be further secured as after mentioned.

First testatum.

Grant by both grantors, of

first annuity, charged on

plantation, &c., in Antigua.

Upon all messuages, &c.

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

members, privileges, and appurtenances: *And also* all [horses, cows, oxen, and sheep, and other cattle whatsoever, coppers, stews, ladles, skimmers, potting-basons, sugar-pots, stills, still-heads, worms, worm-tubs, coolers, cisterns, plantation tools, and all other implements] goods and chattels whatsoever, to the said plantation, hereditaments, and premises, every or any of them, or any part thereof belonging, or in any wise appertaining, or with them, or any of them used, occupied, possessed, or enjoyed; *And also* upon, from, and out of *All other* the plantation and land, and hereditaments, of which the said [*grantor*] the elder is seised for his life as aforesaid, under and by virtue of the above-recited will, with remainder, after the death of the said [*grantor*] the elder, to the said [*grantor*] the younger for his life: *And also* upon, from, and out of the reversion and reversions, remainder and remainders, yearly and other rents, profits, duties, suits, and services of the said plantation and hereditaments and every part and parcel of the same, with their and every of their appurtenances. To HAVE, hold, receive, perceive, take, and enjoy the same annuity of [*first annuity*], and every part thereof, unto the said [*first grantee*], his executors, administrators, and assigns, henceforth for and during the (*k*) terms of the lives of the said [*grantors*] and the life of the longer liver of them. The said annuity to be payable and paid unto the said [*first grantee*], his executors, administrators, or assigns, at or in the common dining-hall of the Inner Temple, London, upon the —— day of ——, &c., in every year, for and during the (*k*) lives of the said [*grantors*], and the life of the survivor of them, between the hours of two and four in the afternoon of the same days respectively; without any deduction or abatement whatsoever out of the same or any part thereof, for or in respect of any charges, taxes, or otherwise howsoever: The first payment of the said annuity to become due, and be made, on the —— day of —— now next ensuing, provided the said [*grantors*], or either of them, should be then living: And in case the survivor of them the said [*grantors*] should die between or in the interval of any two of the said days of payment, and either before or after the said —— day of —— now next, then a proportional

All horses, &c.

All other hereditaments devised by will,

and upon the reversion, &c.

Habendum, first annuity, for grantors' lives, and the life of the survivor;

payable quarterly;

clear of all deductions;

with proportional part to survivor's death.

(*k*) "Term of ninety-nine years, if the said [*grantors*], or either of them, should so long live," &c.

FOR YEARS DETERMINABLE ON DEATH.

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

part of the said annuity up to and inclusive of the day of the decease of the survivor of them the said [*grantors*] to be paid to the said [*first grantee*], his executors, administrators, or assigns, immediately after the decease of such survivor, and demand made thereof. AND THIS INDENTURE ALSO WITNESSETH, that in pursuance of the said agreement with the said [*second grantee*], (*similar grant of second annuity, mutatis mutandis, upon* "ALL THAT and THOSE the said plantation, hereditaments, and premises hereinbefore charged, or made chargeable with the payment of the said annuity of [*first annuity*]." *Habendum for the life of the younger grantor*). AND the said [*grantors*] do, and each of them doth, hereby also grant unto the said [*first grantee*], his executors, administrators, and assigns, as to the said annuity of [*first annuity*], and to the said [*second grantee*], his executors, administrators, and assigns, as to the said annuity of [*second annuity*], that from time to time, when and as often as it shall happen that the same annuities, or either of them, or any part of them, or either of them, shall be in arrear or unpaid in the whole or in part by the space of fourteen days next over or after any one of the days or times whereon the same respectively are hereinbefore appointed to be paid as aforesaid, it shall be lawful to and for the said [*first grantee*], his executors, administrators, and assigns, as to and in respect of the said annuity of [*first annuity*], and to and for the said [*second grantee*], his executors, administrators, and assigns, as to and in respect of the said annuity of [*second annuity*], into and upon the plantation and hereditaments hereby charged with the same annuities, or into and upon any part thereof, to enter and distrain for the same annuities, or yearly sums, or such of them as shall be in arrear, and all the arrears thereof: and the distress and distresses then and there found to detain, manage, sell, and dispose of, in the same manner in all respects as distresses for rents reserved upon leases for years may or ought to be detained, managed, sold, and disposed of; and as if the said annuities were respectively rents reserved upon a lease for years. *To the intent,* that as to the said annuity of [*first annuity*], the said [*first grantee*], his executors, administrators, or assigns; and as to the annuity of [*second annuity*], the said [*second grantee*], his executors, administrators, or assigns, shall or may thereby, therewith, or otherwise, be fully satisfied and paid the same annuities,

Second testatum.

Charged on same plantation, &c.

Power of distress.

or such of them as shall be in arrear, and all the arrears thereof, and all costs, charges, and expenses to be occasioned by non-payment thereof, at the days or times hereinbefore appointed for payment of the same respectively. AND the said [*grantors*] do, and each of them doth, hereby also grant unto the said [*first grantee*], his executors, administrators, and assigns, as far as relates to the said annuity of [*first annuity*] and to the said [*second grantee*], his executors, administrators, and assigns, as far as relates to the said annuity of [*second annuity*], that from time to time, when and as often as it shall happen that the same annuities, or either of them, or any part of them, or either of them, shall be in arrear and unpaid by the space of twenty-one days next over or after any one of the days whereon the same respectively is or are hereinbefore appointed to be paid as aforesaid, then and either upon or at any time after the expiration of the said twenty-one days, it shall be lawful to and for the said [*first grantee*], his executors, administrators, and assigns, for or in respect of the said annuity of [*first annuity*], and to and for the said [*second grantee*], his executors, administrators, and assigns, for or in respect of the said annuity of [*second annuity*], although no legal or formal demand should have been made of the same annuities, or either of them, into and upon the plantation and hereditaments hereby charged with the same annuities, or into and upon any part thereof, in the name of the whole of the same, to enter, and the same plantation and hereditaments to have, hold, and enjoy, and the rents and profits thereof, and of every part thereof, to receive and take to and for his and their own use and benefit, until he or they respectively shall thereby, or therewith, or otherwise, be fully satisfied and paid the same annuities, and all arrears thereof; and also so much of the same annuities, as from time to time shall accrue and grow due to them respectively, during such time as they respectively shall continue in possession of the said plantations and hereditaments, after every such entry as aforesaid; and also all such costs, losses, charges, damages, and expenses as shall be occasioned by non-payment of the said annuities, or any part thereof, at the days and times aforesaid: and such possession, when taken, to be without impeachment of waste.

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

Power of entry.

AND THIS INDENTURE ALSO WITNESSETH, that for further and more effectually securing the payment of the annuities hereby granted; and also in consideration of ten

Third testatum.

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

shillings to each of them the said [*grantors*] already paid by the said [*trustee*], the receipts whereof are hereby acknowledged; *The* said [*grantors*], by the direction of the said [*grantees*] testified by their severally executing these presents, by these presents *do*, and each of them *doth*, grant, bargain, sell, lease, and demise, unto the said [*trustee*], his executors, administrators, and assigns, ALL THAT and THOSE the plantation, hereditaments, and premises, hereinbefore charged with the payment of the annuities hereby granted, or intended so to be; and [every part and parcel of the same, with their rights, members, and appurtenances; AND the reversion and reversions, remainder and remainders, yearly and other rents, suits, and services of the same plantation and hereditaments, with their and every of their rights, members, and appurtenances]; TO HAVE AND TO HOLD the said plantation, hereditaments, and premises, [and every part and parcel of the same, with the appurtenances], unto the said [*trustee*], his executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during, and unto the end of the full term or time of ninety-nine years thence next ensuing, and fully to be complete and ended, if the said [*grantors*], or either of them, should so long live; and without impeachment of or for any manner of waste. [YIELDING AND PAYING therefor, yearly, and every year, during the term hereby granted, the rent of one pepper-corn, if the same should be lawfully demanded.] AND *it is hereby declared and agreed*, that the said term of ninety-nine years is granted or demised to the said [*trustee*], his executors, administrators, and assigns, UPON TRUST for better securing to the said [*grantees*], their respective executors, administrators, and assigns, the due and regular payment of the annuities hereinbefore granted to him and them. AND for that purpose, in case, and when, and as often as the said annuities, or either of them, or any quarterly payment of the same, or either of them, shall be in arrear and unpaid in the whole, or in any part, by the space of twenty-eight days next after any one of the days or times hereinbefore appointed for payment thereof, it shall be lawful to and for the said [*trustee*], his executors, administrators, or assigns, by and out of the rents and profits of the said plantation and hereditaments; or by mortgage or sale of the said plantation and hereditaments, or of a competent part thereof, for all or any part of the said term of

Demise by tenant for life, and for life in remainder, of plantation, &c., and the reversion, &c.

Habendum for ninety-nine years, if either of grantors should so long live.

Reddendum, a pepper-corn.

Declaration that term is demised to trustee,

Upon trust for better securing both annuities;

and for that purpose, when either annuity is in arrear 28 days, trustee, out of the rents and profits, or by mortgage or sale, or by bringing actions, or making distresses upon the tenants of plantation, &c., to levy arrears, with all costs, &c.

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

ninety-nine years, determinable as aforesaid; or by bringing actions against, or making distresses upon, all and every or any of the present or future tenants of the said plantation and hereditaments, for recovery of the rents then in arrear; or by making entries upon the said plantation and hereditaments, or by all and every, or any one or more of the said ways and means; or by any other lawful and reasonable ways and means whatsoever, to levy and raise such arrears of the said annuities as from time to time shall become due and remain unpaid; together with all such damages, costs, charges, and expenses, as the said [*grantees*] respectively, or their respective executors, administrators, or assigns, shall incur, expend, sustain, or be put unto, by reason of the non-payment of the same annuities, or any part thereof; together with the costs, charges, and expenses attending the execution of the trusts hereof. AND UPON THIS FURTHER TRUST, that the said [*trustee*], his executors, administrators, or assigns, shall, in the first place, retain, and reimburse to and for himself and themselves, the costs, charges, and expenses of and attending the execution of the trusts hereby reposed in him or them; and in the next place, pay and satisfy to the said [*grantees*] respectively, or their respective executors, administrators, or assigns, all arrears of the said annuities which shall be then due or owing to them respectively, rateably, without any priority or preference whatsoever; and all costs, charges, damages, and expenses, which they respectively shall have incurred, suffered, borne, sustained, and laid out, by reason or on account of the non-payment of the same annuities; or in or about recovering and enforcing the payment of the same respectively. AND UPON THIS FURTHER TRUST, that, in the meantime, and until the said annuities, or some quarterly payment thereof, shall be in arrear, or unpaid, in the whole, or in part, by the space of twenty-eight days next after some or one of the days hereby appointed for payment of the same respectively; and also from time to time, when and as often as all arrears of the said annuities, and the said costs, charges, damages, and expenses, shall be raised, or fully satisfied and paid, the said [*trustee*], his executors, administrators, and assigns, shall permit and suffer the rents and profits of the said plantation and hereditaments to be received by such person or persons as would have been entitled to the same in case these presents had not been made or executed, and to and

Trustee in the first place to retain expenses of executing trusts;

and in the next place to pay arrears of both annuities, without any priority;

and all grantees' costs, &c.

until annuities be in arrear, and when arrears, &c. paid, trustee to permit rents to be received by persons entitled thereto.

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

for his and their own use and benefit. AND UPON THIS FURTHER TRUST, that the said [*trustee*], his executors, administrators, and assigns, shall from time to time, after paying the said annuities, when and as the same respectively shall become due and payable; and also after paying, deducting, and retaining such costs, charges, damages, and expenses as aforesaid, pay to the person or persons, who would have been entitled to the same in case these presents had not been made or executed, the money (if any) which from time to time shall remain in the hands of the said [*trustee*], his executors, administrators, or assigns, unapplied to any of the purposes hereinbefore mentioned. AND *it is hereby declared and agreed*, that the person or persons who shall pay to the said [*trustee*], his executors, administrators, or assigns, all or any part of the rents and profits of the said plantation and hereditaments; or advance any money upon any sale or sales, or the security of any mortgage or mortgages, of the same plantation and hereditaments, or any part thereof; or otherwise, pursuant to the trusts hereinbefore contained, shall not be obliged or required to see to the application of the said rents, profits, and money respectively, or any of them; or be answerable or accountable for the misapplication or non-application of the same: AND that every receipt which shall be given by the said [*trustee*], his executors, administrators, or assigns, for all or any part of the said rents, profits, and money respectively, shall be a good and sufficient acquittance and discharge for the sum and sums of money which by such receipt shall be acknowledged or expressed to be, or to have been received. AND THIS INDENTURE FURTHER WITNESSETH, that for the purposes and considerations hereinbefore expressed; *The* said [*grantors*], by the direction of the said [*grantees*], by these presents *do*, and each of them *doth*, grant, bargain, sell, assign, transfer, and set over, unto the said [*trustee*], his executors, administrators, and assigns, ALL THAT the above-recited bond given and entered into by the said [*mortgagees*] as aforesaid for payment of the said yearly sum of ——: AND all and every sums and sum of money, which from time to time shall become due or payable under or by virtue of that bond: AND ALSO all the right, title, interest, trust, property, claim, and demand whatsoever, at law and in equity, of them the said [*grantors*], of, in, to, and out of the same bond, sum and sums of money,

Trustee to pay surplus monies in his hands to the persons entitled thereto.

Indemnity to persons paying money to trustee.

Trustee's receipts to be sufficient discharges.

Fourth testatum.

Assignment by both grantors to trustee of term, of

bond given by mortgagees and consignees for paying a yearly sum to grantors:

all sums, &c.

And all the right, &c.

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

To HAVE, hold, receive, perceive, take, and enjoy the said bond, sum and sums of money, and all and singular other the premises hereby assigned, or intended so to be, and every part and parcel of the same, unto the said [*trustee*], his executors, administrators, and assigns, henceforth, as his and their own bond, money, and effects. *With* full power and authority to and for the said [*trustee*], his executors, administrators, and assigns, to use the name or names, and also to act as the attorney or attornies, of the said [*grantors*], or either of them, the executors, administrators, or assigns of them, or either of them, in recovering and enforcing the benefit of the last-mentioned bond, and the money or yearly sum thereby secured, and giving acquittances and discharges for the same. AND *it is hereby declared and agreed,* that the last-mentioned bond, and the money or yearly sum thereby secured, shall be held by the said [*trustee*], his executors, administrators, and assigns, UPON the same or the like trusts, and under and subject to the same or the like provisoes, declarations, and agreements, as are hereinbefore limited, expressed, and declared, of and concerning the said term of ninety-nine years, (determinable as aforesaid), in the said plantation and hereditaments, and the rents and profits thereof. AND THE SAID [*grantors*] do hereby jointly, for themselves, their heirs, executors, and administrators, and each of them severally doth hereby, for himself, his heirs, executors, and administrators, covenant, and agree with the said [*trustee*], his executors, administrators, and assigns, *In trust* as aforesaid, that they the said [*grantors*] the younger, and the survivor of them, will or shall from time to time, during the continuance of both or either of the annuities hereby granted, employ the said [*mortgagees*], or the survivor of them, or in case of their several deaths, or any other cause which shall render it necessary that the consignments of the produce of the said plantation and hereditaments shall be made to some other person or persons, then and in that case, and from time to time, as often as any change shall be made in the consignee or consignees, will or shall employ some person or persons, to be from time to time appointed or approved of by the said [*grantees*], their executors, administrators, or assigns, to receive the consignments of the produce of the said plantation and hereditaments: *And* that the person or persons, who from time to time shall be appointed a consignee or con-

Habendum: with power as their attorney to enforce and receive same.

Declaration that bond and yearly sum thereby secured shall be held by trustee,

upon the same trusts as are hereinbefore declared of term of 99 years.

Covenant by both grantors jointly and severally with trustee, in trust for grantees, to employ mortgagees as consignees, and in case of their several deaths, &c., to appoint others to be approved by grantees:

that new consignees shall execute similar

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

signees, shall, at or before his or their appointment, enter into a bond to the same or the like effect as the said bond of the said [*mortgagees*] : *And* that the same bond shall be assigned to the said [*trustee*], his executors, administrators, or assigns, *In trust* as aforesaid. AND THE SAID [*grantors*] do hereby jointly, for themselves, their heirs, executors, and administrators; and each of them doth hereby severally, for himself, his heirs, executors, and administrators, covenant and agree with the said [*trustee*], his executors, administrators, and assigns, *In trust* as aforesaid, that they the said [*grantors*], or one of them, or the heirs, executors, or administrators of them, or one of them, will or shall from time to time pay unto the said [*grantees*] respectively, or their respective executors, administrators, or assigns, the several annuities or clear yearly sums of [*first annuity*], and [*second annuity*], hereby granted or secured to them as aforesaid; and also such proportional part thereof as aforesaid, free and clear of and from all deductions whatsoever, at the days and times, and in manner and form hereinbefore expressed, limited, and appointed for payment thereof respectively, and according to the true intent and meaning of these presents. AND ALSO that they the said [*grantors*], or one of them, now have, or hath, in themselves, or himself, good right or full power, and lawful and absolute authority, to subject and charge all the said plantation and hereditaments, with the appurtenances, to and with the payment of the said annuities, and the powers and remedies hereby given for compelling and enforcing the payment thereof: *And also* to demise the said plantation and hereditaments unto the said [*trustee*], his executors, administrators, and assigns, for the said term of ninety-nine years, determinable as aforesaid: *And also* to assign the said bond of the said [*mortgagees*], and the money or yearly sum thereby secured, unto the said [*trustee*], his executors, administrators, and assigns, upon the trusts and for the ends, intents, and purposes hereinbefore expressed and declared concerning the said term and bond, money or yearly sum respectively, according to the true intent and meaning of these presents. AND ALSO, that the said plantation and hereditaments shall from time to time, during the continuance of the said annuities, or either of them, continue and be subject to the payment of the same annuities, and each of them, and the said powers and remedies by distress and entry; and be of sufficient value for payment of the said

bond to that assigned;

and that new bond to be also assigned to trustee.

Covenant by both grantors jointly and severally with trustee, in trust for grantees for paying both annuities:

that grantors have good right to charge the plantation with both annuities:

to demise plantation,

and to assign bond to trustee,

upon the trusts hereinbefore declared:

that plantation shall remain subject to the payment of the annuities, and be of sufficient value:

annuities, and all the arrears thereof. AND MOREOVER, that they the said [*grantors*], and each of them, and the heirs, executors, and administrators, of them and each of them, and all and every other person or persons whatsoever, lawfully claiming, or to claim, by, from, under, or in trust for them, or either of them, will and shall, at any time or times, and at all times hereafter, at the costs and charges of the said [*grantors*], or one of them, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other act and acts, deed and deeds, assurance and assurances in the law whatsoever, for further, better, more perfectly, lawfully, and absolutely, or satisfactorily granting or assuring the said annuity of [*first annuity*], with such powers and remedies as aforesaid, unto the said [*first grantee*], his executors, administrators, and assigns, for the (*l*) lives of the said [*grantor*] the elder, and [*grantor*] the younger, and the life of the longer liver of them, in manner aforesaid: *And also* for further, better, more perfectly, lawfully, and absolutely or satisfactorily granting or assuring the said annuity of [*second annuity*], with such powers and remedies as aforesaid, unto the said [*second grantee*], his executors, administrators, and assigns, for the (*m*) life of the said [*grantor*] the younger, in manner aforesaid: *And also* for demising, confirming, or assuring the said plantation and hereditaments unto the said [*trustee*], his executors, administrators, or assigns, for all the then residue and remainder of the said term of ninety-nine years (determinable as aforesaid): *And also* for assigning the said bond of the said [*mortgagees*], and the money or yearly sum thereby secured, unto the said [*trustee*], his executors, administrators, or assigns, upon the trusts, and for the ends, intents, and purposes, hereinbefore expressed and declared of and concerning the same term, and bond, money, or yearly sum respectively, according to the true intent and meaning of these presents; *As* by the said [*first grantee*], his executors, administrators, or assigns, or the said [*second grantee*], his executors, administrators, or assigns, or any of

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

and for further assurance.

(*l*) "Term of ninety-nine years, if the said [*grantors*], or either of them, should so long live." FOR YEARS DETERMINABLE ON DEATH.

(*m*) "Term of ninety-nine years, if the said [*grantor*] the younger should so long live." FOR YEARS DETERMINABLE ON DEATH.

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

them, or the counsel in the law of them or any of them, shall be reasonably devised or advised and required, and be tendered to be made, done, and executed. . AND FURTHER, that they the said [*grantors*], and each of them, will, at any time when thereunto requested by the said [*first grantee*], his executors, administrators, or assigns, and that he the said [*grantor*] the younger will, at any time when thereunto requested by the said [*second grantee*], his executors, administrators, or assigns, attend at the Pelican Life Insurance Office, or any other office of insurance in London or Westminster, for the purpose and to the end that a policy of insurance may be obtained by and at the expense of the said [*first grantee*], his executors, administrators, or assigns, on the lives of the said [*grantors*], or the life of either of them; or by and at the expense of the said [*second grantee*], his executors, administrators, or assigns, on the life of the said [*grantor*] the younger: *And also* that the said [*grantors*] will not, nor will either of them, during the continuance of the said annuity of [*first annuity*], go on the seas, or in parts beyond the seas, without giving to the said [*first grantee*], his executors, administrators, or assigns, as early notice thereof as may be; and, if circumstances will admit, at least one calendar month's notice: *And* that the said [*grantor*] the younger will not, at any time during the continuance of the said annuity of [*second annuity*], go on the seas, or in parts beyond the seas, without giving to the said [*second grantee*], his executors, administrators, or assigns, as early notice thereof as may be, and, if circumstances will admit, at least one calendar month's notice: *And* that in case the said [*first grantee*], his executors, administrators, or assigns, should have previously insured, or should insure, any sum or sums of money, not exceeding [*consideration-money for first annuity*], on the lives of the said [*grantors*], or the life of either of them; or the said [*second grantee*], his executors, administrators, or assigns, should have previously insured, or should insure any sum or sums of money, not exceeding [*consideration-money for second annuity*], on the life of the said [*grantor*] the younger; and the said [*first grantee*], his executors, administrators, or assigns, or the said [*second grantee*], his executors, administrators, or assigns, should pay any additional rate of insurance, by reason of the said [*grantors*], or either of them, going on the seas, or beyond the seas, as aforesaid, then, for or in respect

Covenant to appear at insurance office;

not to go beyond the seas during the continuance of the annuities, without giving notice to the respective annuitants:

to pay additional premiums to grantee;

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

of so much time as the said [*grantors*], or either of them, shall go on the seas, or be in parts beyond the seas, and the said [*first grantee*], his executors, administrators, or assigns, or the said [*second grantee*], his executors, administrators, or assigns, shall pay any such additional premium or premiums of insurance, they the said [*grantors*], their heirs, executors, or administrators, will or shall reimburse, and pay to the said [*grantees*], and respectively, their respective executors, administrators, or assigns, all such sum and sums of money as the said [*grantees*] respectively, and their respective executors, administrators, or assigns, shall pay, as and for an additional premium or premiums, in respect of the said [*grantors*], or either of them, going upon or being beyond the seas, with interest thereon at the rate of £5 per cent. per annum: *And* that all and every such sum and sums of money shall be charged and chargeable upon the term of ninety-nine years, hereby granted, determinable as aforesaid; and be raisable under and by virtue of the trusts of the term, and the said bond of the said [*two mortgagees*], and the money or yearly sum thereby secured; and also under and by virtue of the said several warrants of attorney, bearing even date with these presents, and the judgments (if any) to be entered up thereupon; and shall be payable to the said [*grantees*] respectively, and their respective executors, administrators, or assigns, when and as soon as the same shall have been paid by them respectively. (*Add indemnity clause to trustee, ut ante*, p. 269). AND *it is hereby declared and agreed*, that the said bonds of the said [*grantors*], and warrants of attorney, and judgments (if any) to be entered up under and by virtue of the said warrants of attorney, and also these presents, are respectively given, and to be entered up, for the considerations only which are expressed in these presents; and for securing one and the same annuity of [*first annuity*], and not for securing several annuities of [*first annuity*]; and for securing one and the same annuity of [*second annuity*], and not for securing several annuities of [*second annuity*]: AND that no execution or executions shall be issued or taken out upon the judgments to be entered up as aforesaid, or either of them, unless or until the whole or a part of some quarterly payment of the annuity of [*first annuity*], or of the annuity of [*second annuity*], thereby or intended to be thereby secured, shall be in arrear by the space of twenty-one days: AND

additional premiums to be raisable under trusts of term and bond, warrants of attorney, and judgments.

Declaration that securities are given for one and the same sum respectively;

that no execution shall be issued on judgments respectively, until annuity thereby secured shall be in arrear 21 days:

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

that from time to time, and at all times hereafter, it shall be lawful to and for the said [*grantees*] respectively, and their respective executors, administrators, or assigns, to sue out and prosecute one or more writ or writs of execution upon the said judgments, or either of them, without reviving the same, although and notwithstanding there should have been no former proceedings upon the said judgments, or either of them, or no proceedings within one year (*n*) next and immediately preceding the teste or issuing of such writ or writs: AND that the said [*grantors*] will not, nor will either of them, nor shall the heirs, executors, administrators, or assigns, of them or either of them, have, receive, or take any plea, exemptions, proceedings, or other benefit from the omission of the said [*first grantee*], his executors, administrators, or assigns, or the said [*second grantee*], his executors, administrators, or assigns, to revive the said judgments, or either of them, or proceed under the same from year to year, and within the space of every year: AND that if they or either of them should attempt so to do, by motion or other proceeding, this present agreement shall or may be pleaded or given in evidence as a bar thereto. AND *it is hereby declared and agreed*, that after the decease of the survivor of them the said [*grantors*], and full payment to the said [*first grantee*], his executors, administrators, or assigns, of the said annuity of [*first annuity*], and all arrears thereof up to the day of the decease of such survivor, and all such costs, charges, and expenses as aforesaid, the said [*first grantee*], his executors, administrators, or assigns, will or shall, at the request, costs, and charges of the heirs, executors, administrators, or assigns of either of them the said [*grantors*], acknowledge satisfaction upon the record or records of the said several judgments, for [*double the consideration-money for the first annuity*], and costs of suit, in due form of law; or do any further or other act, matter, or thing, which may be reasonably required for releasing and extinguishing all right and remedy under his or their said judgments, and all executions thereupon respectively; *So* as for doing thereof, the said [*first grantee*], his executors, administrators, or assigns, shall not be compelled or compellable to go or travel from the place or places of his or their then

that it shall not be necessary to revive judgments:

that grantors will not take advantage of omission to revive judgment.

Declaration that after decease of survivor of grantors, and full payment of first annuity, and all costs, first grantee will acknowledge satisfaction on his judgments, or do any further act for releasing them.

(*n*) *Vide* Act of Assembly of Antigua, 31 Geo. 3, No. 475, s. 84, *post*, p. 417.

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

residence or abode. AND *it is hereby further declared and agreed*, that after the decease of the said [*grantor*] the younger, and full payment to the said [*second grantee*], his executors, administrators, or assigns, of the said annuity of [*second annuity*] and all arrears thereof, up to the day of the decease of the said [*grantor*] the younger, and all such costs, charges, and expenses as aforesaid, the said [*second grantee*], his executors, administrators, or assigns, will or shall, at the request, costs, and charges of the said [*grantor*] the elder, his heirs, executors, administrators, or assigns, or of the heirs, executors, administrators, or assigns of the said [*grantor*] the younger, any or one of them, acknowledge satisfaction upon the record or records of the said several judgments for [*double the consideration-money for the second annuity*], and costs of suit, in due form of law; or do any further or other act, matter, or thing which may be reasonably required for releasing and extinguishing all right and remedy under his or their said judgments, and all executions thereupon respectively; *So* as for doing thereof the said [*second grantee*], his executors, administrators, or assigns, shall not be compelled or compellable to go or travel from the place or places of his or their then residence or abode.

Declaration that after younger grantor's decease, and full payment of annuity, and all costs, second grantee will acknowledge satisfaction on his judgments, or do any further act, for releasing them.

PROVIDED ALWAYS, that in case the said [*grantors*], or either of them, should at any time hereafter be desirous of repurchasing the said annuity of [*first annuity*]; and should give to the said [*first grantee*], his executors, administrators, or assigns, fourteen days' notice in writing of such their or his desire; and upon the expiration of the said notice, or at any time afterwards, and upon giving fourteen days' such notice as aforesaid, should pay unto the said [*first grantee*], his executors, administrators, or assigns, the sum of [*original consideration-money for first annuity, and one quarter of a year's annuity*]: and also all and every sum and sums of money which shall be then due and owing to the said [*first grantee*], his executors, administrators, or assigns, for or on account of the said annuity of [*first annuity*]; and also a proportional part of the same annuity, up to and inclusive of the day or time of paying the said sum of [*original consideration-money for first annuity*]. And also all sums (if any) which the said [*first* [*grantee*], his executors, administrators, or assigns, shall have paid for additional premiums of insurance as aforesaid, and interest thereon as aforesaid. And should also pay to the

Power to repurchase first annuity on giving 14 days' notice.

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

said [*trustee*], his executors, administrators, or assigns, all and every sum and sums of money which shall be then due to the said [*trustee*], his executors, administrators, or assigns, for or on account of such costs, charges, and expenses as shall have been advanced, paid, or incurred by him or them, in the execution of the trusts hereby reposed in him and them; or in or about recovering or enforcing the payment of the said annuity of [*first annuity*], when in arrear; then, and in that case, the said [*first grantee*], his executors, administrators, or assigns, will or shall accept and take the said sum of [*original consideration-money for first annuity*], as and for the price of repurchase, and in satisfaction and full discharge of the said annuity of [*first annuity*]. *And* the said [*first grantee*], his executors, administrators, and assigns, on the request, and at the costs and charges of the said [*grantors*], or either of them, or the assigns of them or either of them, will or shall deliver up the secondly above-recited bond and the warrants of attorney for entering up judgments thereon, to be cancelled; and acknowledge satisfaction on the records of the same judgments; and release the said annuity of [*first annuity*]: *Or otherwise*, and at the option of the said [*grantors*], or the survivor of them, or his assigns, the said [*first grantee*], his executors, administrators, or assigns, will or shall assign, transfer, and set over the secondly above-recited bond, warrants of attorney, judgments (if any), and annuity of [*first annuity*], unto such person or persons as the said [*grantors*], or the survivor of them, or his assigns, shall direct or appoint; and upon such trusts, and for such purposes as he or they shall declare concerning the same. PROVIDED LIKEWISE, (*add similar proviso for the repurchase of second annuity, mutatis mutandis, the consideration being the original consideration-money for second annuity, saying,* "the thirdly above-recited bond and warrants of attorney," &c.) AND *it is hereby further declared and agreed*, that upon or at any time after the repurchase of both the said annuities, or the repurchase of one of them, and the determination of the other, and payment of all arrears of the said annuities, and all such sums of money, costs, charges, and expenses as aforesaid, the plantation and other hereditaments demised, and the bond assigned to the said [*trustee*] as aforesaid, shall, for all the estate and interest of the said [*trustee*], his executors, administrators, and assigns therein, subject and without prejudice to any

On repurchase, bond and warrants of attorney to be cancelled;

and satisfaction acknowledged on judgments:

or otherwise at the option of grantors,

bond, warrants of attorney, and judgments, to be assigned as they shall direct.

Power to repurchase second annuity.

After determination of both annuities, and payment of arrears and costs, &c., premises to be held in trust for the persons entitled thereto.

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

such sale or sales, mortgage or mortgages, as aforesaid, be held *In trust* for the person or persons who would have been entitled to the same respectively, in case these presents had not been made or executed. AND *to the intent* that these presents may be duly acknowledged, recorded, and registered, and take effect according to the laws, usage, and custom of the said island of Antigua; and for the other purposes hereinafter mentioned, the said several persons parties to these presents, by these presents *do*, and each of them *doth*, make, ordain, constitute, and appoint, and in the place and stead of them and each of them respectively put [*two attornies*], esquires, both of the said island of Antigua, jointly and separately, to be the true and lawful attornies (*o*) or attorney of them and each of them, for them and each of them, and in the names and name of them and each of them, to appear in any court, or before any judge, registrar, or other proper officer of the said island of Antigua, to acknowledge these presents to be the act and deed, acts and deeds, of the parties to these presents, and the names or

Power of attorney to acknowledge the deed in Antigua, in order for it to be registered.

(*o*) The power of attorney from a person absent from the islands to acknowledge a deed, is usually inserted in the deed itself; but it may be made by an indorsement under hand and seal, or by an annexed deed. [See forms of such powers, *post*, Vol. 6, pp. 135, 168.] If it be inserted in the deed, the execution of the deed by the absent person must be proved on oath by one of the subscribing witnesses, agreeably to No. 475, s. 58, *post*, 416. But if the power of attorney be by a distinct indorsed or annexed deed, the execution of the deed and the power of attorney also must be proved in the same manner. So also, when a power of attorney authorizes the execution of colonial deeds, or otherwise concerns lands, tenements, or slaves, there should be a power inserted to acknowledge the power; No. 475, sect. 58, *infra*, and the execution of the power of attorney must be proved in the same manner as any other deed. Unless an affidavit by one of the subscribing witnesses, of the execution of a deed made out of any of the islands, and the attestation or certificate of the mayor, &c., be annexed to the deed, the registrar will not register it, and it will be returned in order that it may be done. In the certificate by a mayor, &c. of the affidavit of the execution of colonial deed, it has been usual in practice ever since the English statute, to refer to it as the authority by which the certificate is made; yet it does not appear that the letter of the act is any authority for it. If no reference were made to any statute, the certificate would be equally effectual. But as Lord Coke says, "it is a safe thing to follow approved precedents, for *nihil simul inventum est et perfectum.*" Co. Litt. 230. a.—[As to the recovery of debts in the plantations, *vide post*, tit. POWER OF ATTORNEY.]

Power of attorney to acknowledge colonial deed.

Proof of the execution must be made by one of the witnesses.

Affidavit and certificate of execution of colonial deeds.

39. GRANT AND DEMISE OF PLANTATION IN ANTIGUA, ASSIGNMENT OF BOND, &c.

name, seals or seal, hereunto subscribed and affixed, to be their respective handwritings and seals: *And* further, to do and perform any act, matter, or thing, in such cases used and accustomed, or which shall be requisite or advisable for making or rendering these presents valid and effectual in the law, according to the true intent and meaning of the same: (*And* to indorse upon or annex to these presents a schedule or schedules containing a full and particular description of the lands hereby charged or granted and demised). IN WITNESS &c. (*p*)

To do any other act for rendering same effectual;

and to indorse schedules of lands.

THE SCHEDULE TO WHICH THE ABOVE-WRITTEN INDENTURE REFERS.

LAWS OF THE COLONIES.

(*p*) As the above annuity is charged on an estate in Antigua, and as deeds and wills conveying plantations and estates in our West Indian colonies are frequently drawn and executed in England, Scotland, and Ireland, it may be of service to the majority of readers to be presented in this place with some information as to the law relating to the title to real estate in the colonies, and conveyances of property there *.

* As to the Constitution of the Colonies, see Abbé Raynal's Philosophical and Political History of the Settlements and Trade of the Europeans in the East and West Indies, Book xiv. &c.; 1 Bla. Com. 107—109; Callis on Sewers, 46. And as to the extension of particular English statutes to the Colonies, see *Rex* v. *Vaughan*, 4 Burr. 2500: *Campbell* v. *Hall*, Cowp. 204; Mr. Baron Maseres's Canadian Freeholder, Dialogue 2; Howell's State Trials, Vol. 20, p. 239, 287; Edwards's History of the West Indies, Book iii. chap. 2, 2nd Ed.; Gloster's Preface to the Laws of Dominica: *Attorney-General* v. *Stewart*, 2 Meriv. 143, and *infra*, p. 399.

Formerly there was only one, but since 1816 there have been two executive governments in the Leeward Caribbee Islands, namely, a Captain General and Governor in Chief of the Islands of Antigua, Montserrat, and Barbuda †; and another for Saint Christopher's, (which includes Anguilla), Nevis, and the Virgin Islands. But there is still a distinct legislative assembly for each state, which is governed by its own peculiar laws. The assembly for the Virgin Islands meets at Tortola; each of the other assemblies meets on the island from which the respective laws take their names.

† The island of Barbuda is but little known and rarely spoken of. Barbuda contains thirty-nine thousand acres and one thousand five hundred inhabitants, lies in W. long. 61° 3′, N. lat. 18° 5′, and is eleven leagues from the nearest land. It is exclusively and entirely the property of the Codrington family.

LAWS OF THE COLONIES.

What English laws have force in the colonies.

[With respect to the laws in force in British possessions abroad, there is a memorandum in 2 P. Wms. 75, that it was determined in the Privy Council,—

1st. That if there be a new and uninhabited country found out by English subjects, as the law is the birthright of every subject, so, wherever they go, they carry their laws with them, and therefore such new-found country is to be governed by the laws of England; though, after such country is inhabited by the English, acts of Parliament made in England without naming the foreign plantations, will not bind them; for which reason it has been determined that the Statute of Frauds does not bind Barbadoes. (*Sheddon* v. *Goodrich*, 8 Ves. 487; *Rex* v. *Vaughan*, 4 Burr. 2500 *.)

2ndly. When the King of England conquers a country it is a different consideration; for then the conqueror, *by saving the lives of the people conquered*, gains a right and property in such people, in consequence of which he may impose upon them what laws he pleases.

3rdly. Until such laws given by the conquering prince, the laws and customs of the conquered country shall hold place; unless when these are contrary to our religion †, or enact anything that is *malum in se*, or are silent, for in all such cases the laws of the conquering country shall prevail.]

[See to the same effect *Blankard* v. *Galdy*, Salk. 411; Holt, 341; Comb. 228: and *Dutton* v. *Howell*, Show. P. C. 32. In the case of a conquered country, as the Queen has absolute power to impose what terms of capitulation she pleases, she may establish what constitution and laws she pleases, without the consent of Parliament; but these once made are binding, and cannot be altered by her successors without the consent of Parliament. *Calvin's case*, 7 Rep. 17; *Hall* v. *Campbell*, Cowp. 208.]

[Sometimes the laws of England are extended to conquered colonies; but in that case, as well as in the case of newly planted colonies, it is a rule that such only of the laws of England apply to the colony as existed at the time it first became subject to the English laws, and as are applicable in object and operation to the circumstances of the colony. 1 Blackst. Com. 100: *Att.-Gen.* v. *Stewart*, 2 Meriv. 143. In that case

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* [This rule seems to have been forgotten on some occasions. Thus, in *Ex parte Anderson*, 5 Ves. 240, an order was made by Lord *Alvanley* for a conveyance of lands in Calcutta by an infant trustee, under the stat. 7 Anne, c. 19, although that act does not name the colonies; and cases were then cited of similar orders by Sir *Thomas Sewell* and Lord *Thurlow*. And upon the authority of *Ex parte Anderson*, Lord *Eldon* made a like order with reference to an estate in Ireland: (see the Irish acts for the purpose, cited *infra*, Vol. 6, p. 420): *Evelyn* v. *Forster*, 8 Ves. 96. The statute now in force, 11 Geo. 4 & 1 Will. 4, expressly extends the authority of the Lord Chancellor of England to land and stock in the colonies, and other dominions of the Crown, except Scotland and Ireland; *infra*, Vol. 6, p. 434.]

(†) [So laid down also in *Calvin's case*, 7 Rep. 17; but erroneously, as appears by the practice in regard to the East Indies. See also *Hall* v. *Campbell*, Cowp. 209.]

LAWS OF THE COLONIES.

it was held that the Mortmain Act, 9 Geo. 2, being aimed exclusively at a state of things which existed in England only, did not extend to any colony which afterwards became subject to the English laws. See Howell's State Trials, Vol. 20, 289. So it seems no penal statutes extend to the colonies. See *Dawes* v. *Painter*, Freem. 75; 2nd Rep. W. I. C. 61.]

Real estate in colonies, assets for payment of debts.

[By the English statute, 5 Geo. 2, c. 7, s. 4, real estates in any of the plantations in America are declared to be assets for the payment of all debts in the like manner as real estates are by the law of England liable to the satisfaction of specialty debts, and subject to the like remedies in the colonial Courts as personal estate there.]

Gifts to witnesses to a will.

[The statute 25 Geo. 2, c. 6, which avoids gifts to the attesting witnesses to a will, extends to all colonies where the Statute of Frauds, or any similar statute, is in force. And this enactment is not repealed as to them by the recent statute, 7 Will. 4 & 1 Vict. c. 26.]

Of the laws prevalent in the different British possessions.

[Of the British Colonies in the western hemisphere, the English law, more or less modified, has force in Barbadoes, the Bermudas, St. Kitt's, Anguilla, Nevis, the Bahamas, Montserrat, Antigua, Tortola, (which are original British settlements); Jamaica, (the proper description of which, whether as a settlement or a conquest, is not well ascertained, see *Rex* v. *Vaughan*, 4 Burr. 2500: *Beaumont* v. *Barrett*, 1 E. F. Moore, 75; 1 Burge Col. Law, xxxiii); and Dominica, Grenada, St. Vincent, Tobago, and Upper Canada, into which, though foreign settlements, the English law has been to a great extent introduced.]

[New Brunswick, Nova Scotia, Cape Breton, Prince Edward's Island, and Newfoundland, are governed by the English law, which has force also in Honduras. But the constitution of the last settlement can scarcely be considered as formed. The magistrates receive their commission from the Governor of Jamaica. 1 Burge, xli.]

[Sierra Leone, New South Wales, Australia, and the other British settlements in Australasia, are also governed by the English law. As to New South Wales and Van Diemen's Land, see 2 & 3 Vict. 70.]

[The origin of the present state of the law at Gibraltar is not well understood. But at present the English laws of real property prevail there. See *Jephson* v. *Riera*, 3 Knapp, 130.]

[As to the law in the East Indies, see *Larkins* v. *Larkins*, 3 Bos. & P. 16, 109: *Gardiner* v. *Fell*, 1 Jac. & W. 22: *Cumming* v. *Forrester*, 2 Jac. & W. 934: *Mayor of Lyons* v. *East India Company*, 1 E. F. Moore, 175.]

[The Roman-Dutch law is in force in British Guiana, (including Demerara, Berbice, and Essequibo), the Cape of Good Hope, and Ceylon. The Spanish law is the foundation of that of Trinidad. St. Lucie and Lower Canada are governed by the old law or *coutumes* of Paris.]

[The code civil is established in the Mauritius; and the laws of The Channel Islands—Jersey, Guernsey, &c. are founded on the old Norman customs.]

[The law of Malta is founded on the civil law.]

References on Colonial Law.

[For a very able and detailed account of these different systems of laws, and of the rules by which questions arising out of their conflict are determined, the reader is referred to Mr. Burge's Commentaries on Colonial and Foreign Laws. The particular acts of the colonies down to 1827 are stated at length in Mr. Howard's work; and a convenient

summary of the law and practice of the several settlements will be found in Clark's Colonial Law.]

LAWS OF ANTIGUA.

No. 5.

THE LAWS OF ANTIGUA RELATING TO CONVEYANCES.

Antigua was settled by the English in 1632. By an Act of Assembly of Antigua, intituled, "*An Act for establishing a Register Office and the several Fees that belong thereunto*," it is enacted (sect. 2), that a register office shall be established in this island, which shall be an office distinct and apart from all other offices; in the which shall be entered first all warrants for lands hereafter to be granted, the surveyor's return upon every such warrant recorded, and the original returned under the surveyor's hand filed; all patents, deed of sale, leases of land, and mortgages, shall in the said office be *made*, and *afterwards* recorded therein at large; and also in the said office shall be kept one book for alienation of lands, wherein shall be registered a brief account of what land every person possesses, relating to the other books of every parcel entered at large, and what shall at any time by any person be sold or mortgaged, from time to time, and at all times, to any other person, transporting the same from the vendor or seller, to the account of the vendee or purchaser.

Register office to be established for entering warrants for land, and recording surveyor's returns and conveyances. *See* s. 4.

and a book for alienations kept.

Sect. 4. And, *That no writing, lease, deed of sale, mortgage, or any other transaction relating to lands made in this island, by any other person than the registrar himself, or his clerks in the said office, shall be any ways binding or beneficial to any person concerned therein, either to be pleaded in law or otherwise;* as also that all and every conveyance, lease, mortgage, or other writings, touching land in this island, made beyond sea, shall be held ineffectual to all intents and purposes, and shall not be allowed to be pleaded in any of the Courts of this island, until all and every such writings shall be recorded in the said registrar's office, in such manner and form as other deeds and writings made in the said office shall be entered and recorded. (Dated at Antigua, 13th April, 1668, 20 Car. 2.)

Deeds made beyond sea of no effect till recorded in the island.

The passage in italics repealed by Register Act No. 106, *ss.* 8, 18.

The defect in this act, of not limiting a time for recording deeds, is supplied by No. 39, *ss.* 6, 7, *infra.*

By an Act of Assembly of Antigua, intituled, "*An Act for the establishing and confirming of the Inhabitants of this Island in their Title to their Lands.*" Reciting that the estates of all persons chiefly consist of lands granted to them, or which they may have purchased from such as may have held their lands only by force and virtue of such grants, or that it hath so happened that lands so granted have legally descended to them; and that all such pretences give them but a weak and insufficient title to the same, in regard that many of the inhabitants have no patent under any public seal appointed by his Majesty, neither is it known when any such seal will come, notwithstanding our present captain-general, William Stapleton, hath taken all possible care to procure one for that purpose, enacts,

No. 39.

PREAMBLE. Difficulty of tracing the title to lands claimed under patent, and expediency of preventing litigation.

ACT. Proprietors and possessors of lands enjoying them five years quietly, to be deemed to have good title:

Sect. 2. That if any person or persons, proprietor or possessor of any lands, tenements, or hereditaments within this land, have, and shall for the future quietly, without lawful interruption, enjoy the same severally or successively by the space of five years, that such person or persons so possessing shall have good right and title to the same against all men whatsoever, and during the estate thereof he or they are possessed: EXCEPTING such as shall prosecute their title to the same within two years after the date of this act; and such married woman, and per-

except against persons prosecuting their title within two

LAWS OF ANTIGUA.

sons under the age of twenty-one years, and of unsound memory, prosecuting their respective titles within one year after their being married, becoming of age, and sound memory; excepting also all such persons as are in his Majesty's service, or in durance in foreign parts or by an usurped authority.

Sect. 5. Recites the defect in the old register act, No. 5, already noticed in the margin.

Sect. 6. Enacts, That the said act, and every clause therein, shall be duly followed and pursued; and that all persons who shall for the future set, or by any other act by law, transfer their right of any lands, tenements, or hereditaments within this island, shall cause the deeds and other acts aforesaid to be inrolled, registered, and recorded in the said registrar's office, within *twenty days* after passing the same, and that all such deeds so passed, and not recorded in the time aforesaid, shall be utterly void to all intents, constructions, and purposes, and not pleadable in any of the courts of this island; any law, custom, or usage to the contrary in any wise notwithstanding. This limitation to extend only to such as are resident in this island at the time of conveyance, and no other.

Sect. 7. That all conveyances, contracts, bargains, and agreements, relating to any lands or tenements in this island, which shall happen to be passed, conveyed, and confirmed by any act in law in *Europe*, shall be inrolled, registered, and recorded in the said office within *one year* after passing the same, or else shall be void and not pleadable as aforesaid. Provided the conveyance in *Europe* be not lost at sea, or otherwise intercepted within the said time, which interception or loss to be made out by sufficient authority, certificates, or evidences.

Sect. 11. That in actions concerning the titles of lands, it shall be a good plea in bar to such action, for the defendant to allege that he, and they whose estate he hath, have been in quiet and peaceable possession of the said land in question for and during the space of five years, and this plea duly entered shall bar the plaintiff or defendant, UNLESS he can disprove the same, or make it appear that the said five years' quiet possession incurred during the time that the said plaintiff or demandant was under the age of twenty-one years, a woman under coverture, or of unsound memory, or that the defendant or tenant held the same as his attorney, tenant, servant, or overseer, by virtue of some particular estate for years, life, or in tail, which, at or before the time of the action brought, was expired.

Sect. 12. That all manner of persons whatsoever, that are concerned to make claims to any lands or tenements within this island, so as to make their claims effectual, are to make claim by their action at law, duly entered in the offices of the courts of that *Precinct* where the lands and tenements are, according to the former practice and rules of the said courts of the *Precinct;* to which action the tenants or persons in possession are to receive summons from the said courts; and that all Judges and Courts of Common Pleas do allow of no other claim to any land or tenement for any person plaintiff in any suit or suits before them, than what was to be made by their action on record and summons given in manner aforesaid, and not otherwise; any law, custom, usage, or practice, to the contrary notwithstanding.

Sect. 13. That all persons whatsoever, that shall hereafter make their

years after the act; married women, minors, &c. one year after removal of disability; persons absent in the King's service, durance abroad, &c.

RECITAL of old register act, No. 5.

Deeds executed in ANTIGUA, not recorded in 20 days, void. *The enlarged period for registering, by No.* 106, *sect.* 15, *is merely a provisional opening for the remedy of omissions at that time, and not a supersedure of this clause, which is confirmed by No.* 198, *sect.* 3.

Deeds executed in EUROPE, not recorded in *a year*, void, except in case of accident in transmitting them.

By No. 270, *sect.* 2, *the time for registering deeds executed out of* ANTIGUA, *is* two years.

Five years' possession a good bar;

except against infants, &c.

Claims to be made by action at law, and not otherwise.

No. 541, *sect.* 2, *recognises the abolition of separate precincts.*

Action to be

LAWS OF ANTIGUA.

claim to any lands or tenements within the time limited within this act, do, by the said action, or some other action, if brought in the five years then next after, bring the same to trial, and the same trial to be conclusive and definitive on the plaintiff's part for ever, and never to bring any action thenafter for the same, but to be for ever barred; any law, usage, custom, or practice to the contrary notwithstanding. (Dated 9th January, 1676, 27 Car. 2.)

tried in five years after claim; and if lost, to be decisive for ever.

No. 83.

By an Act of Assembly of Antigua, intituled, "*An Act for quieting the Inhabitants of this Island in their present Possessions, and preventing litigious Lawsuits*," it was enacted, (sect. 7), that it shall and may be lawful for the future, where the husband stands possessed of his wife's inheritance, together with his wife, under their hands and seals, to pass away the said wife's inheritance by any manner of deed whatsoever: and the person or persons to whom the same is passed shall have, hold, and enjoy the same, according to the limitations specified in any deed aforesaid, the same being hereby declared to be good and effectual in law, when recorded in the register's office according to the act for the same, in as good and ample a manner as though the same were passed by way of fine and recovery before any of the Judge or Judges in Westminster Hall*, or otherwise; any law, usage, or custom to the contrary notwithstanding.

Wife's inheritance may be conveyed by husband and wife's deed; [Extended to "any other estate of freehold," No. 32, *post*, 409; No. 270, *post*, 411.]

Such deed when registered to be as effectual as fine and recovery.

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* Although the courts in England have no jurisdiction over lands in our West Indian colonies, yet a fine or recovery of lands there, levied in the Court of Common Pleas at Westminster, was deemed by the colonial courts to have the same effect as if the lands had been within the proper jurisdiction of the Court. But as to Antigua, and the islands adjacent and thereto belonging, the deeds declaring the uses, making the tenant to the præcipe, &c., if executed out of Antigua, must have been registered there within two years after execution. Act of Assembly of Antigua, No. 270, s. 2. When fines were levied or recoveries suffered here of lands in the colonies, it was effected by stating the lands to have been situate within the jurisdiction of the court here; thus, "in the island of Antigua, that is to say, in the parish of Saint Mary, Islington, in the county of Middlesex." *Forster* v. *Pollington*, Barnes's Notes, 216, 3rd ed.; Wilson on Fines, 57, 4th ed.; Stokes on the Colonies, 426. In some modern law books a fine is said to be "sometimes levied," and a recovery "occasionally suffered" here, of lands in the West Indies. However, there has not been an instance of such a fine or recovery for a considerable number of years. For more than a century past it has been perfectly unnecessary, and whenever it has been done, as to any of the Leeward Caribbee Islands, a useless expense has been incurred: as a deed duly acknowledged and registered, and, when made in England or Ireland, inrolled in the Court of Chancery of that kingdom where made, according to the provisions of the acts above stated, has the same effect as such a fine and recovery and declaration of the uses. See Act of General Assembly of the Leeward Caribbee Islands, No. 32, ss. 3 & 5, *post*, 409, 410; and Act of Assembly of Antigua, No. 270, s. 1, *post*, 411. But notwithstanding inrolment in England or Ireland, the deed with the acknowledgment, examination, and certificate thereon, must be recorded at length in the

Fines or recoveries here of lands in our West Indian colonies valid.

No modern instance of such a fine or recovery.

LAWS OF ANTIGUA.

Wife to be examined; to be certified by Judge.

Sect. 7. Provided the said wife be first examined before one of the judges of this island, that she does not the same with any compulsion, dread, or fear of her husband, but of her own voluntary act and will; and the Judge before whom such examination is taken is to certify the same under his hand upon the same deed; *provided the purchaser do really and bonâ fide, without fraud, pay for the same, the true intrinsic value of the said purchase, or one-half part at least.* (Dated 21st July, 4 Will. & M. 1692).

The part in Italics repealed by No. 106, *sect.* 22.

No. 106.

No conveyances of land (except by will) to be good till acknowledged before register by grantor, or agent.

Acknowledgment to be indorsed and attested by register.

By an Act of Assembly of Antigua, intituled, "*An Act for the better regulation and settlement of the Register's Office,*" (sect. 9), it is enacted, That from henceforth no bargain, sale, mortgage, lease, conveyance, assurance, or other instrument of writing, of what nature, kind, or quality soever (wills only excepted), whereby or wherein any estate in lands and tenements shall be assured, passed, conveyed, set, let, confirmed, released, altered, barred, enlarged, assigned, or any ways transferred from one subject to another, shall be good or effectual in law or equity, or any ways pleadable, or allowed to be pleaded in any court in this island, unless the same be acknowledged by the vendor, donor, lessor, or other person or persons conveying or transferring the same, or by some person or persons lawfully empowered to acknowledge the same, before the register himself for the time being, or such lawful deputy as in and by the said act he hath power and authority to depute and appoint; which said acknowledgment shall be indorsed on the

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register's office of Antigua, within two years after the execution. No. 270, ss. 2 & 4, *post*, 411, 412; No. 475, s. 58, *post*, 416. For which purpose the deed must be acknowledged by the grantor, or his attorney, before the register of Antigua; No. 106, s. 9, *supra*; and under No. 475, s. 58, *post*, 416, there should be an accompanying affidavit of the execution, and a certificate attesting the same by the mayor, &c.

Advantages of this mode of destroying entails, &c.

One of the advantages attending this judicious alteration of the law is, it enables a tenant in tail at any time to bar his issue in tail, and the remainders over, without the concurrence of the tenant of the immediate freehold; whereby it facilitates the sale of estates, which, in all commercial countries is an bjoect of primary importance. There will be a future opportunity of resuming this subject as to our other colonies. In this place it is impossible wholly to restrain the feelings of melancholy mixed with pleasure, raised on seeing the colonies of a great and enlightened nation precede their parent country in the path of rational legislation, by rendering unnecessary the fictitious proceedings in a common recovery, and which the suggestion of the incomparable author of the Commentaries on the Laws of England, the ridicule of the learned observer on the more ancient statutes, the recommendation of the industrious author of the Touchstone of Common Assurances, have not yet (*a*) induced the legislature of England to follow, by enacting similarly wise laws, and thereby imitating the philosophical example of her children. See 2 Bla. Com. 360: Barrington on the Ancient Statutes, 131, 448, 5th edit.: Sheppard's England's Balme, 112, edit. 1657: Wynne's Eunomus, 196, 5th edit.

Our most philosophical legal writers have recommended the abolition of common recoveries.

(*a*) [Mr. Bythewood wrote in 1823.]

back side of the said deed, conveyance, or other instrument of writing, by the said register or his deputy, together with the day of the month, and year of our Lord, in words at large, and afterwards signed by the register's own hand, or the hand of his deputy, to be appointed as aforesaid.

When acknowledged, register not to part with conveyance till recorded.

Sect. 10. That after such acknowledgment and indorsement as aforesaid, the said deed, conveyance, or other instrument of writing, before the said register shall part with the same out of his said office, shall be duly and fairly registered and entered at large in a book made of good thick and durable paper, to be kept for that purpose.

Time of acknowledgment to be deemed the time of registry.

Sect. 11. And to prevent all disputes which may happen about the priority of entering the said deeds, conveyances, or other instruments of writing, or any of them, the time of acknowledgment shall be deemed, esteemed, and taken to be the time of the entry or registry thereof*.

No will devising lands to be evidence till proved before governor, &c., and registered. *Vide* No. 475, s. 59, *post*, 416.

Sect. 12. That from henceforth no will wherein or whereby any estates in lands or tenements are devised, shall be allowed to be pleaded or admitted for evidence in any court of law or equity, until the same be duly proved before the governor in chief, lieutenant, or deputy governor, or such other person or persons having power to take the probate of wills, and entered at large in the said register's office.

Copies of deeds attested by register to be evidence.

Sect. 14. That copies of all bargains, sales, mortgages, or other deeds, or instruments of writing, and of all wills, warrants, letters patent, or other instruments of writing, which at any time heretofore have been, or hereafter shall be, duly entered and registered in the said register's office, pursuant to any clause in the said act, intituled, "*An Act for establishing a Register's Office, and the several Fees belonging thereunto*," or in this present act directing the same, and attested by the said register, or in his absence by his lawful deputy for the time being, shall be as good evidence and allowed to be pleaded in any court, as if the original was then and there exhibited; except leases, which being temporary in their own nature, the record shall be equal to the original in validity no longer than one year after the expiration of such term in such lease mentioned, or till the first court after such year expired, if no court within a year after the expiration as aforesaid; to the end that no person may have trouble after the original is complied with and cancelled.

Exception as to leases.

All conveyances already recorded to be deemed as indented, and future conveyances to be indented by the register.

Sect. 19. That all instruments of writing, between subject and subject, already recorded in the register's office, shall be taken, esteemed, and deemed as actually intended, notwithstanding any words that shall be contained in any of the aforesaid instruments of writing do seem to the contrary; and for the future, all instruments of writing made in this island, relating unto lands, bonds, letters of attorney, (wills excepted), shall be actually indented by the register or his deputy; and if it shall so happen, that any deed or instruments of writing made in this island, relating unto any land, written by any other person than the register, or his deputy, and brought to be recorded in the register's

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Time of registry.

* But as to deeds barring estates tail, &c., No. 270, s. 4, *post*, 412, the time of delivery at the register's office is the time of registry.

LAWS OF ANTIGUA.

office, and is not actually indented, the said register or his deputy shall indent the same before the recording thereof.

A recorded conveyance equal to livery and seisin.

Sect. 20. And whereas there may arise many disputes concerning the livery and seisin of lands, tenements, and houses purchased, as the course of the common law requires in such matters; for the prevention whereof, and to ascertain the same, be it enacted by the authority aforesaid, that all instruments of writing heretofore made, relating unto lands, tenements, and houses, and recorded in the register's office, shall be to all intents and purposes equal to a livery and seisin, and shall be tantamount to the same.

Future deeds to operate without livery; pleading the registry as good as livery.

Sect. 21. And all deeds made in this island for the future, and recorded in the register's office, shall operate according to the purport of the said deeds, without any livery and seisin; and pleading the said deeds to be registered in the register's office, shall be adjudged in any court of this island as livery and seisin, and to be as good in law by such pleading and shewing as aforesaid, as though livery and seisin were actually perfected, according as the law in the strictest sense can allow or construe the same; any law, usage, or custom to the contrary notwithstanding*. (Dated at St. John's, 3rd November, 1698, 10 Wm. 3.)

Lease for a year of colonial estates unnecessary.

* The operative words generally introduced in conveyances of freehold colonial property are, "hath granted, bargained, sold, enfeoffed, and conveyed." The lease for a year is sometimes omitted; indeed, it is always unnecessary (*a*), and is a useless expense, because the estate may pass by the deed as a feoffment without livery of seisin, or as a grant without attornment, whether the deed be executed in or out of the island. *Supra*, ss. 20 and 21, and *vide post*, p. 411, No. 270, s. 1. In the conveyance of large estates the lease for a year is often used. Mr. Shephard says, The lease and release prevail, as evidence of the law would be necessary to establish the validity of the conveyance out of the island. Practice of St. Vincent, 118. This reason is very unsatisfactory, as the question of title cannot arise in any court out of the island, excepting on appeal to the King in Council, *Att.-Gen.* v. *Stewart*, 2 Meriv. 156, where alone an appeal lies from the territorial tribunals of the plantations, 3 Wooddes. Lect. 395, and where the local laws of the colony are admitted as a matter of course; and it is admitted by our Courts of law (who have no immediate jurisdiction, but only incidentally, as in cases of breach of covenant for further assurance, &c.), that lands pass by *grant* alone in Jamaica. *Goffe* v. *Elkin*, 2 Mod. 240. So it is admitted here, on the same principle, that under the Irish statute, 9 Geo. 2, c. 5, s. 6, *ante*, p. 153, a recital of a lease for a year in a release of lands in Ireland is sufficient, although in fact no lease be prepared. *Daly* v. *Kelly*, 4 Dow. Par. Cas. 435.

(*a*) [A lease for a year is unnecessary in Jamaica (*Goffe* v. *Elkin*, 2 Mod. 240: *Daly* v. *Kelly*, 4 Dow. 435), Barbadoes, Antigua, Upper Canada, Prince Edward's Island, and New Brunswick, and also in Dominica, if the deed be made in the island; but there appears to be no authority for saying that the rule applies to St. Kitt's, Trinidad, the Bahamas, or any other British colonies. *Infra*, Vol. 6, p. 136.]

LAWS OF ANTIGUA.

At this period it is requisite, in order to a perfect understanding of the subsequent laws of Antigua, to introduce the following acts of General Assembly, now in force in the different islands subject to the respective laws of ANTIGUA, MONTSERRAT, NEVIS, SAINT CHRISTOPHER'S, and the VIRGIN ISLANDS, so far as the general laws are not altered by the particular laws of the several islands.

THE LAWS OF THE LEEWARD CARIBBEE ISLANDS RELATING TO CONVEYANCES.

LAWS OF LEEWARD CARIBBEE ISLANDS.

By an act of the commander-in-chief of all the Queen's Leeward Caribbee Islands in America, the General Council and General Assembly of the same, intituled, "*An Act to settle General Councils and General Assemblies for the Caribbee Islands in America, and to secure to each particular Islands their own peculiar Laws and legal Customs*," it is enacted, sect. 3, "That all the laws and legal customs now in force in each and every the Caribbee Leeward Islands, and respecting only the circumstances of the same, be and remain in their full force and virtue." And by sect. 4, the General Council and General Assembly are empowered "to make, enact, and ordain such general laws and ordinances as may be proper and convenient for all the Caribbee Leeward Islands." (Dated in Nevis, 7th June, 4th Anne, 1705.)

No. 28.

Each island to retain its laws as to local circumstances.

General Assemblies to make general laws.

The acts of this assembly more immediately relating to the subject of this Work, are the following:—

No. 31.

An Act for preventing tedious and chargeable Lawsuits, and for declaring the Rights of particular Tenants, which enacts,

Sect. 2. That the *common law of England*, as far as it stands unaltered by any written law of these islands, or some of them, confirmed by your Majesty, or some of your royal predecessors in Council, or by some act or acts of Parliament of the kingdom of England, extending to these islands, is in force in each of these your Majesty's Leeward Caribbee Islands, and is the certain rule whereby the rights and properties of your Majesty's good subjects inhabiting these islands are and ought to be determined; and that all customs or pretended customs or usages contradictory thereunto are illegal, null, and void*.

The common law of England to be in force, except where altered by laws of the islands.

Pretended customs to the contrary void.

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* It has been determined by the King in Council, that the Statute of Charitable Uses does not extend to the island of Nevis: Howell's State Trials, xx. 289; and by the Court of Chancery in England, that the statute does not extend to the island of Grenada, or to any other colony, it being a law of local policy, adapted solely to the country in which it was made. *Att.-Gen.* v. *Stewart*, 2 Meriv. 160, 163. Nor do any other laws bind the colonies, excepting such as are applicable to their situation and condition, unless expressly enacted. Howell, xx. 189, *ante*, p. 399. *Vide* 7 & 8 Will. 3, c. 22; 6 Geo. 3, c. 12. Therefore the bankrupt laws, founded on the peculiar jurisdiction vested in the Lord Chancellor of England, (and not transmissible otherwise than by some special provision), the law of tithes, the jurisdiction of spiritual courts, the poor laws, the rule prohibiting two persons, being in partnership, from underwriting the same policy of insurance, and a multitude of other provisions, are neither necessary nor convenient for them, and therefore are not in force. 2 Meriv. 150, 152; Bl. Com. 107. See

The Statute of Charitable Uses &c. does not extend to the colonies.

LAWS OF LEEWARD CARIBBEE ISLANDS.

Utensils used with plantations, made freehold.

Widow dowable out of them.

Sect. 3. And be it, and it is hereby declared, that coppers, stills, and all cattle, horses, asses, commonly used and exercised upon and about any plantation or plantations, and all other plantation utensils, are inheritance, and affixed to the freehold, and are, with the plantation, descendible to the heir at law, and the widow dowable as well of them and every of them, as of the lands and tenements whereof her husband died seised*; and that such widow may and shall recover the mesne profits of such plantation, cattle, horses, asses, or other hereditaments whereof she shall be so endowed, against the party or parties that have received or detained the same, in damages, by action upon the case in any court of record in that island wherein the estate, whereof dower is so recovered, lies, or by suit in equity against the party or parties, their executors or administrators, that have received or denied the same.

Dwelling-house only to be parted, the plantation and works to be enjoyed by the heir and widow in undivided parts, and the profits apportioned.

Sect. 4. Provided always, that the said plantation, or the works thereon being, shall not be divided or otherwise parted than by allotment of the third part of the dwelling-house with its appurtenances and necessary conveniences to the tenant in dower for her habitation or convenient reception upon the said plantation, when she shall think fit to repair thereunto; which third part of the dwelling-house, the provost marshal or his lawful deputy, upon application to him made, shall set out to such tenant in dower, and shall forthwith put her in quiet and peaceable possession of the same; and that none of the coppers, stills, cattle, horses, asses, or other plantation utensils whatsoever, to such plantation belonging, shall be carried off or employed from the said plantation, otherwise than for the immediate service thereof, by such tenant in dower, or by the heir, or him or them in reversion or remainder, but that each of them shall join in carrying on the interest for the best advantage of all the parties concerned.

Devise to a widow of third

Sect. 5. That where any person hath or shall, by his last will and testament in writing, devise any part of his estate, or of the profits

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the Antigua Act for the Prevention of Frauds and Perjuries, No. 438, *post*, p. 413. In Antigua an act is in force for the relief of insolvent debtors.

Houses, lands, &c. in the plantations liable to satisfy debts.

* By the English statute 5 Geo. 2, c. 7, intituled, "*An Act for the more easy Recovery of Debts in his Majesty's Plantations and Colonies in America,*" it is enacted, sect. 4, "That the houses, lands, and other hereditaments, and real estates, situate or being within any of the said plantations belonging to any person indebted, shall be liable to and chargeable with all just debts, duties, and demands of what nature or kind soever, owing by any such person to his Majesty, or any of his subjects, and shall and may be assets for the satisfaction thereof, in like manner as real estates are by the law of England liable to the satisfaction of debts due by bond or other specialty, and shall be subject to the like remedies, proceedings, and process, in any court of law or equity in any of the said plantations respectively, for seizing, extending, selling, or disposing of any such houses, lands, and other hereditaments and real estates, towards the satisfaction of such debts, duties, and demands, and in like manner as personal estates in any of the said plantations respectively are seized, extended, sold or disposed of, for the satisfaction of debts.

thereof, amounting in value to a third part of his estate whereof she was dowable, and omitting to declare such devise to be in bar of her dower, shall devise the rest, residue, or remainder of his estate to any other person or persons, that such devise to his wife shall be taken and construed to be a complete bar of her dower, unless such devisee, being of full age, shall disagree to the said devise, and claim or demand her dower within three years after the death of her husband, or after her having arrived at the age of one-and-twenty years.

part of an estate to bar the dower, unless the widow accept the dower instead of the devise.

Sect. 6. Provided always, that this act, nor any thing herein contained, shall extend or be construed to extend to impeach or make void an act made for provision of younger children of fathers dying intestate, intituled, "*An Act for making the coppers, mills, and stills of intestates' estates, chattels;*" which act was made by the President and Council of Nevis, executing the office of Lieutenant-General and assembly of the island of Nevis, on the 25th day of March, 1699, and stands confirmed by his late Majesty King William the Third in council; but that the same and every clause, matter, and thing therein contained, shall be and remain in full force; and that the several islands under this government shall be at liberty to enact the same law, any thing in this act to the contrary, or seeming to the contrary, in anywise notwithstanding*.

This act not to affect an act of the island of Nevis concerning intestates.

Sect. 7. Provided also, that where any person is entitled to dower of any parcel of land unsettled, [*i. e.* not planted], that a warrant shall go out to the Provost Marshal of the island wherein such land lies, at the prayer either of the tenant who is so entitled to dower, or of the party or parties in reversion or remainder, requiring him within eight days from the day of the date of the said warrant, to impannel a jury of twelve good and lawful freeholders of such island wherein such land lies, who shall, upon their oaths, set out the third part of the said land to the party so entitled to dower, by her to be held in severalty, by metes and bounds, any thing in this act or any other law or statute contained to the contrary notwithstanding. (Dated at Nevis, 20th June, 1705, 4th Anne.)

In lands not planted, dower may be set out by a jury.

No. 32.

An Act for the supplying the want of fines and recoveries in these Islands, and for making any deed or deeds, duly executed and acknowledged before any of her Majesty's Justices of the Court of Common Pleas in the Kingdom of England or Ireland, or any of these Islands, equivalent to a fine and recovery, or fines and recoveries, duly and regularly levied and suffered in any of her Majesty's Courts of Record at Westminster, enacts,

ENLARGED as far as respects ANTIGUA, by No. 270, *post*, p. 411, and No. 537, *post*, p. 411.

Sect. 3. That a deed or deeds in due form of law, made and executed by the husband and wife, of the plantations, lands and tenements, and other hereditaments of the wife, or of any plantation, &c. whereof the husband was solely and in his own right seised at any time during the coverture, or whereof the husband, or husband and wife, were seised in right of the wife, or the husband jointly with the wife; or by tenant in tail, general or special; and by the party or parties, and each of them, from whom the interest passes, acknowledged before some of her Majesty's justices of the Court of Common Pleas in the Kingdom of

Deeds acknowledged before justices of the Common Pleas in England, &c. shall bar femes covert, and tenants in tail, as a fine and recovery; *vide ante*, 403. *By*

* It has been determined by his Majesty in council, that beasts, and moveable utensils, are chattels in St. Christopher's; Dalrymple's MS. Vol. i. 75; Shephard's Practice of St. Vincent, 119.

LAWS OF LEEWARD CARIBBEE ISLANDS.

act of ANTIGUA, No. 537, *this is extended*, as far as respects ANTIGUA, *to acknowledgment before* any justice of the King's Bench, *or* Baron of the Exchequer *in England or Ireland.*

England or Ireland, or any of your Majesty's Leeward Caribbee Islands, wherein such plantation, &c. do lie; shall to all intents and purposes be as effectual and valid in the law to pass all the estate, right, title, interest, and claim of the party or parties, and of each of them, to such deed or deeds, in or to all or any the plantation, &c. by such deed or deeds granted, conveyed, or made over, or thereby intended to be granted, conveyed, or made over, to the person or persons, bargainee or bargainees, grantee or grantees, in the said deed or deeds mentioned, their heirs and assigns, for ever, to whom or to whose use any estate in such plantation, &c. is by the said deed or deeds limited, bargained, sold, granted, or conveyed, according to the several limitations in the said deed or deeds contained, as if the party or parties to the said deed or deeds, from whom the interest moves, had levied a fine or fines with proclamations, or suffered a common recovery or recoveries of such plantation, &c. in any of their Majesty's Courts of Record at Westminster, and duly executed deeds leading the uses of such fine or fines, or declaring the uses of such recovery or recoveries to be to such bargainee or bargainees, grantee or grantees, their heirs and assigns for ever, to whom or to whose use such plantation, &c. are, by the deed or deeds, so to be executed and acknowledged as is above mentioned, limited, and conveyed, or that the same and every part thereof had been bargained, sold, conveyed, or set over by any of the firmest deed or deeds, conveyance or conveyances, assurance or assurances of the law, that could be advised or devised by counsel learned in the law.

By No. 270, ss. 2, 3, extended, *as to* ANTIGUA, *infra*, 411.

Every wife to be of age, and examined; examination to be indorsed and subscribed by the judge, and inrolled within six months, in the secretary's office, if acknowledged in one of the islands; if in England or Ireland, in the Court of Chancery of that kingdom where acknowledged within six months.

Sect. 4. Provided always, that the wife, who is party to any such deed or deeds, be of full age at the time of the execution thereof, and be privately and apart examined by the judge, before whom such deed or deeds is acknowledged, whether she do execute the same freely, voluntarily, and without fear, threats, or compulsion, of or by her husband used; which examination of the wife shall be indorsed, together with the acknowledgment of the party or parties, from whom the interest by the said deed or deeds passes; and such acknowledgments shall be subscribed by the judge before whom the acknowledgment of such deed or deeds is taken, and by and before whom such wife is privately examined.

By No. 270, *ss.* 2, 4, *conveyances executed out of Antigua* to be recorded at length in the registrar's office *within two years:* post.

Sect. 5. That all and every deed or deeds, so executed and acknowledged as aforesaid, shall be inrolled at length in the secretary's or register's office of that island, wherein the estate so granted or conveyed lies (if the said deed or deeds be executed and acknowledged in any of these your Majesty's Leeward Caribbee Islands) within six calendar months after the acknowledgment of such deed or deeds; and in case the said deed or deeds shall be executed and acknowledged within either of your Majesty's kingdoms of England or Ireland, that the same shall be inrolled at length in the High Court of Chancery in that kingdom where the same was executed and acknowledged, within six calendar months of the acknowledgment thereof; and that the acknowledgment [*i. e.* the certificate of acknowledgment] of such deed or deeds so subscribed by the judge before whom the same was taken (as before is directed), shall be a sufficient proof of the due execution of the said deed or deeds; and the record, or an exemplification or attested copy of such deed or deeds, shall be admitted and allowed to be given in evi-

dence upon any trial at law, or hearing in equity, where the original deed or deeds is or are mislaid, and cannot be procured; any law, statute, or usage to the contrary in anywise notwithstanding. (Dated in Nevis, 21st June, 1705, 4th Anne).

LAWS OF LEEWARD CARIBBEE ISLANDS.

Having stated the general laws of the Caribbee Leeward Islands, so far as they are not altered by the particular laws of each island, it is necessary to return to the subsequent particulars—

LAWS OF ANTIGUA RELATING TO CONVEYANCES.

LAWS OF ANTIGUA.

By an act of assembly of Antigua, intituled, "*An Act for the supplying of the several defects in the Laws of this Island concerning conveyances and assurances of lands, tenements, [slaves], and other freeholds and inheritances, lying and being in* ANTIGUA, *and the islands thereto adjacent and belonging; and for making the probate of the execution of deeds, in parts beyond seas, relating to such &c. effectual, without an acknowledgment thereof before the Register of this Island, or his deputy;*" enacts,

No. 270.

Conveyances executed out of Antigua, effective, without livery of seisin or attornment. *Vide ante*, p. 406.

Deeds containing words which pass the fee-simple, recorded to bar entails, &c., if party transmitting right be of age. *Vide ante*, p. 403.

Sect. 1. That all deeds, conveyances, and assurances, which shall be executed in any parts beyond the seas, of and concerning lands, tenements, rents, and other freeholds and inheritances lying and being in Antigua, or the islands adjacent and thereto belonging, shall be good and effectual to pass estates and interests, rights and titles of and in such lands, &c., according to the purport, word, and lawful intention of the same deeds, without livery of seisin or attornment; it being hereby declared that livery of seisin or attornment were never required in any such deeds by the constant usage, laws, and practice of Antigua, and that all and every such deeds, conveyances, and assurances, having sufficient words to pass the fee-simple of such lands, &c. and duly recorded as the laws of Antigua direct and require, shall be, to all intents and purposes, as effectual to bar, discontinue, dock, extinguish, cut off, and destroy all estates tail, rights to estates tail, remainders vested and contingent, and all reversions, rights, charges, powers, and authorities, dower and thirds, estates and rights of femes covertes, of, in, touching and concerning all and every such lands, &c., as a fine with proclamations, according to the laws of that part of Great Britain called England, duly levied in the Court of Common Pleas at Westminster, or a common recovery suffered with due execution, returned and made in the same Court of Common Pleas at Westminster, or both such fine and recovery, with deeds properly executed to lead and declare the uses of both or either such fine or recovery, are or is by law, in that part of Great Britain called England, of, for, touching, and concerning lands, &c. lying and being in that part of Great Britain called England, and all rights, charges, powers, and authorities touching and concerning the same: so always that all parties so granting, conveying, or passing shall be of the full age of twenty-one years.

Deeds executed out of Antigua, to be inrolled in Antigua in two years.

Sect. 2. Provided, that all deeds, conveyances, and assurances, bargains, and agreements, of and concerning lands, &c. executed in any part of his Majesty's dominions in Europe or elsewhere, (except Antigua), or any other part of the world not belonging to or under the Crown of Great Britain, shall be inrolled, registered, and recorded in the register's office of Antigua within two years after the execution thereof.

LAWS OF ANTIGUA.

Deeds by tenants in tail, married women, &c. executed in England or Ireland, to be acknowledged &c. conformably to act of Leeward Islands, No. 32, sect. 5, *ante*, p. 410. And see No. 475, sect. 58, *post*, 416.

When executed in Antigua, acknowledgment, &c. as No. 5, 39, 106, 198, 275, require.

In Scotland, acknowledgment, &c. before lord of session or sheriff, to be certified, with place and date under his hand and seal.

In any *other* place belonging to Great Britain acknowledgment, &c. before judge of Common Pleas or court of record; if no such judge, before the person in chief command certified respectively under his hand and seal.

In any other place in Europe before chief officer of a corporation, certified under a public seal:
in any *other* place before the person in chief command, certified under his hand and public seal.

Sect. 3. And provided also, that whenever any estates tail, rights to estates tail, remainders vested or contingent, reversions, rights, charges, powers and authorities, dowers, and thirds, estates and rights of femes covertes, are to be barred, discontinued, docked, extinguished, cut off, or destroyed, that the deed or deeds so passing or conveying, if executed in that part of Great Britain called England, or in Ireland, shall in all respects be executed and acknowledged by the party and parties granting and conveying, and married women be thereon privately examined, and be certified, inrolled, and registered as directed and required in and by a certain general act of the Leeward Caribbee Islands in America, made at Nevis, intituled "*An Act for supplying the want of fines and recoveries in these Islands, and for making any deed or deeds duly executed and acknowledged before any of her Majesty's Justices of the Court of Common Pleas, in the Kingdom of England or Ireland, or any of these Islands, equivalent to a fine and recovery, or fines and recoveries, duly and regularly levied and suffered in any of her Majesty's Courts of Record at Westminster,*" dated at Nevis, the 21st June, 1705, &c.; and if executed in Antigua, to be also acknowledged by the party and parties granting and conveying, and married women thereon privately examined, and be certified and registered as the particular law and acts of Antigua do require; and if executed in that part of Great Britain called Scotland, then to be acknowledged by such parties granting and conveying, and married women to be privately examined before one of the Lords of Sessions, or any Sheriff of any county or stewartry; and such acknowledgment and examination, with the name of the place, and day and year of our Lord, or the King's reign, shall be certified upon the same deed and deeds, under the hand and seal of such Lord of Sessions, or such Sheriff; and, if executed in Barbadoes, or in any of the Leeward Caribbee Islands in America, or in any other colony, territory, or dominion in Europe, Asia, Africa, or America, belonging or to belong to the Crown of Great Britain, then to be acknowledged by such parties, and married women to be privately thereon examined before some judge of his Majesty's Court of Common Pleas, or of some other court of record; or where no such court of Common Pleas, or other such court of record is established, then before the person who shall exercise and execute the chief command there; and such acknowledgment and examination, with the name of the place, day, and year of our Lord or the King's reign, shall be certified upon the same deed and deeds, under the hand and seal of such judge or commanding officer: and if the same shall be executed in any foreign kingdom, territory, colony, or place in the world, not belonging to or under the dominion of the Crown of Great Britain, then such acknowledgment and examination, if taken in Europe, shall be taken before the chief officer of, and shall be certified under the public seal of, some city or town corporate, or city or town being in nature of a corporation, having a public chief officer, and using a public seal, in any part of Europe; and if such acknowledgment and examination shall be taken in any foreign colony in Asia, Africa, or America, the same shall be taken before the person there in chief command, and be certified under his hand, and such seal as such person there in chief command shall use as his public seal.

Sect. 4. And touching and concerning the proof and further authen-

LAWS OF ANTIGUA.

ticating such deeds and conveyances, be it enacted, That no such deeds, conveyances, or assurances, executed any where beyond sea, out of Antigua, shall be pleadable in law or equity, or given or permitted to be proved or read in evidence in law or equity, until the same with the acknowledgment, examination, and certificate thereon shall be all recorded *at length* in the register's office by law appointed or to be appointed in Antigua, for registering deeds relating to lands in Antigua; and that where any such deed shall be produced in any such manner as aforesaid, acknowledged and certified, the same, without any further acknowledgment or proof, shall be received and recorded in the said register's office of Antigua; and after being so recorded shall need no further proof, but be admitted as evidence in law and equity; and copies attested from the said office of all such deeds shall be as good evidence as allowed and practised with relation to copies of deeds there registered in other cases in law and equity in Antigua, and shall have priority as in other cases directed; and the very day and year of our Lord in words at length, when such deeds respectively first shall be brought to the said register's office to be recorded, shall be truly and immediately indorsed on such deeds, and attested under the hand of the register, or his deputy executing the said office, and shall be duly registered and entered in the said office with the respective deed; and such time when such deed shall be first brought to the register's office to be recorded, shall be deemed, esteemed, and taken to be the time of the entry or register thereof. (Dated at St. John's, 28th July, 1764, 4 Geo. 3.)

Deeds not evidence till registered *at length* in Antigua.

Deeds so certified to be received for registry without further proof; originals recorded, and copies attested by register evidence.

Register to indorse in *words*, date of receiving deed, which is to be deemed time of registry. *Vide ante*, p. 450, n.*

An Act of Assembly of Antigua, intituled, "*An Act for the prevention of fraud and perjury*," enacts,

No. 438.

Sect. 1. That from and after three calendar months after publication hereof, no action shall be brought whereby to charge any executor or administrator upon any special promise, to answer damages out of his own estate, or whereby to charge the defendant, upon any special promise, to answer for the debt, default, or miscarriages of another person, or to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them, or upon any agreement that is not to be performed within the space of one year from the making thereof; unless the agreement upon which such actions shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereupon by him lawfully authorized. (See *Exp. Rucker*, 1 Mon. & A. 481).

No action to be brought on *special promise* of executor, &c. to pay damages out of his *own* estate; or to pay debt of *another*; or agreement in consideration of marriage, or for sale of land, &c., or any agreement not to be performed in a year; unless in writing, and signed by the party, or agent.

Sect. 2. That from and after the expiration of the said three calendar months, no contract for the sale of any goods, wares, and merchandizes, for the price of twenty pounds, current gold and silver money of this island, or upwards, shall be allowed to be good; except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in *earnest* to bind the bargain, or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized.

No contract for sale of goods, &c. to the value of £20 good; unless buyer receive part, or give earnest, or memorandum be signed.

Sect. 3. That from and after the expiration of the said three calendar months, all devises and bequests of any lands or tenements shall be in

Devises of lands &c. to be

LAWS OF ANTIGUA.

writing, and signed by the devisor, or by some other person in his presence, and by his express directions, as his last will and testament, in the presence of one credible *white* witness, who shall attest and subscribe the same in the presence of the said devisor; or shall be wholly written, dated, and subscribed by the proper hand of the said devisor; or else shall be utterly void and of none effect.

signed by devisor in his presence, or by his direction, and attested by one white witness, or to be wholly written by devisor.

Sect. 4. Provided always, that the wills and testaments of free negroes, mulattoes, or mustees, or other persons of colour, may be attested by any free persons of colour; any thing hereinbefore contained to the contrary notwithstanding.

Wills of persons of colour may be attested by persons of colour.

Sect. 5. And moreover no devise in writing of lands, tenements, or hereditaments, nor any clause thereof, shall at any time (after the expiration of the said three calendar months) after publication thereof, be revocable otherwise than by some other will or codicil in writing, or other writing declaring the same, or by burning, cancelling, tearing, or obliterating the same by the testator himself, or in his presence, and by his directions and consent: but all devises and bequests of lands, tenements, and hereditaments, shall remain and continue in force until the same be burnt, cancelled, torn, or obliterated by the testator, or by his directions in manner aforesaid; or unless the same be altered by some other will or codicil in writing, or other writing of the devisor, signed in the presence of one witness, who shall attest and subscribe the same in the presence of the said devisor, as his last will and testament; or unless the same be altered by some other will or codicil in the handwriting of the devisor, dated and subscribed by him, declaring the same; any former law or usage to the contrary notwithstanding.

No devise of lands, &c. revocable, unless testator, or some person by his direction, burn it, &c.; or testator sign revocation or alteration in the presence of one witness; or sign alteration written wholly by himself.

Sect. 6. That if any person shall attest the execution of any will or codicil which shall be made after the expiration of three calendar months after the publication hereof, to whom any beneficial devise, legacy, estate, interest, gift, or appointment of or affecting any real or personal estate, (other than and except charges on lands, tenements, or hereditaments for payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will or codicil, or any person claiming under him, be utterly null and void; and such person shall be admitted as a witness to the execution of such will or codicil within the intent of this act, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will or codicil.

Devise to witness void; except charge of debts.

Sect. 7. That in case, by any will or codicil, any lands, tenements, or hereditaments, are or shall be charged with any debt or debts, any creditor, whose debt is so charged, hath attested, or shall attest the execution of such will or codicil, every such creditor, notwithstanding such charges, shall be admitted as a witness to the execution of such will or codicil within the intent of this act.

Interested witness having accepted or released, or after tender refused legacy, competent.

Sect. 8. That if any person shall attest the execution of any will or codicil, which shall be made after the expiration of three calendar months after the publication hereof, to whom any legacy or bequest shall be thereby given; whether charged upon lands, tenements, or hereditaments, or not, and such person, before he shall give his testimony concerning the execution of any such will or codicil, shall have been

Witness having refused after tender, to be barred; having accepted, to retain, though will void.

paid, or have accepted or released, or shall have refused to accept such legacy or bequest upon tender made thereof, such person shall be admitted as a witness to the execution of such will or codicil, within the intent of this act, notwithstanding such legacy or bequest: provided, that, in case of such tender and refusal as aforesaid, such person shall in no wise be entitled to such legacy or bequest; but shall be for ever afterwards barred therefrom; and in case of such acceptance as aforesaid, such person shall retain to his own use the legacy or bequest which shall have been so paid, satisfied, or accepted: notwithstanding such will or codicil shall afterwards be adjudged or determined to be void for want of due execution, or for any other cause or defect whatsoever.

Interested witness dying in lifetime of testator, or before he shall have accepted or refused legacy, a legal witness; subject to the consideration of the Court.

Sect. 9. That in case any such legatee as aforesaid, who shall attest the execution of any will or codicil, which shall be made after the expiration of three calendar months after the publication hereof, shall die in the lifetime of the testator, or before he shall have received or released the legacy or bequest so given to him as aforesaid, and before he shall have refused to receive such legacy or bequest on tender made thereof, such legatee shall be deemed a legal witness to the execution of such will or codicil, within the intent of this act, notwithstanding such legacy or bequest. Provided always, that the credit of every such witness, so attesting the execution of any such will or codicil, in any of the cases in this act before mentioned, and all circumstances relating thereto, shall be subject to the consideration and determination of the court and jury before whom any such witness shall be examined, or his testimony or attestation made use of, or of the court of equity in which the testimony or attestation of any such witness shall be made use of, in like manner, to all intents and purposes, as the credit of witnesses in all other cases ought to be considered of and determined.

No person after refusing *legacy &c. by act declared void*, or after being examined as a witness, to receive bequest, &c. or any composition for bequest, &c. under will.

Sect. 10. That no person to whom any beneficial estate, interest, gift, or appointment, shall be given or made, which is hereby enacted to be null and void, as aforesaid, or who shall have refused to receive any legacy or bequest on tender made as aforesaid, or who shall have been examined as a witness concerning the execution of such will or codicil, shall, after he shall have been so examined, demand or take possession of, or receive any profit or benefit of or from such estate, interest, gift, or appointment so given or made to him, in or by any such will or codicil, or demand, receive, or accept any such legacy or bequest, or any satisfaction or composition for the same, in any manner, or under any pretence or colour whatsoever.

No nuncupative will good, when bequest exceeds £60, unless proved by at least one person bidden to bear witness to it by testator; nor unless made in last sickness, &c.

Sect. 11. That from and after the expiration of the said three calendar months, no nuncupative will shall be good, where the estate thereby bequeathed shall exceed the value of sixty pounds current gold and silver money of this island, that is not proved by the oath of one witness at the least that was present at the making thereof; nor unless it be proved that the testator, at the time of pronouncing the same, did bid the person present bear witness that such was his will, or to that effect; nor unless such nuncupative will were made in the time of the last sickness of the deceased, and in the house of his or her habitation or dwelling, or where he or she hath been resident for the space of ten days, or more, next before the making of such will, except where such

LAWS OF ANTIGUA.

person was surprised or taken sick, being from his or her own home, and died before he or she returned to the place of his or her dwelling.

After six months, no testimony good that was not written in six days after will pronounced.

Sect. 12. That after six months next after the speaking of the pretended testamentary words, no testimony shall be received to prove any nuncupative will, except the said testimony, or the substance thereof, were committed to writing within six days after the making of the said will.

No probate to be granted till fourteen days after decease of testator; widow or kindred may enter caveat.

Sect. 13. That no letters testamentary, or probate of any nuncupative will, shall be proved before the governor in chief, or such other person having power to take the probate of wills, till fourteen days at the least after the decease of the testator be fully expired; nor shall any nuncupative will be, at any time, received to be proved, unless process hath first issued to call in the widow or next of kindred to the deceased, to the end that they may combat the same if they please.

No will in writing repealable *orally* except committed to writing, read to and allowed by testator.

Sect. 14. That no will in writing, concerning any goods or chattels or personal estates, shall be repealed, nor shall any clause, devise, or bequest therein, be altered or changed, by any words, or will by word of mouth only, except the same be, in the lifetime of the testator, committed to writing, and, after writing thereof, read to the testator, and allowed by him, and proved to be so done by one witness at the least.—(Dated at Antigua, 22nd September, 1786, 26 Geo. 3.)

No. 75.

Deeds and powers of attorney, proved by deposition before officer prescribed to have been executed in Great Britain or Ireland, or any British colony, [and by No. 509, s. 5, in states of America,] to be received. See No. 198, s. 5. No. 270, s. 3.

By a temporary Act of Assembly of Antigua, from time to time continued, and by virtue of an Act of Assembly, dated the 6th day of February, 1818, now in force, intituled, "*An Act for establishing Courts of Common Pleas, Error, King's Bench, and Grand Session; and for the better regulating and settling due methods for the administration of Justice,*" it is enacted, (Sect. 58), "That conveyances and deeds, and also letters of attorney, procurations, and other powers in writing made in places out of this island, which shall at any time after the publication of this act be produced in any court of Justice within this island, with a deposition proving the same, sworn before the Lord Mayors of London, York, or Dublin, or any other mayor or chief officer of any city or town corporate within the kingdoms of Great Britain or Ireland, and attested under the public seal of such city or town corporate, or under the hand and public seal of any chief governor, or president of the council, of any colony in his Majesty's dominions, and annexed to every such instrument of writing, shall be deemed, adjudged, and taken as sufficient evidence in law and equity, as if the witnesses therein named, and having subscribed the same, were personally present, and made such proof *vivâ voce;* provided such deeds, if concerning lands and tenements, be in all respects duly acknowledged and recorded in the registrar's office of Antigua, as the laws of Antigua heretofore made direct and require."

If relating to lands, &c., to be acknowledged and recorded.

Probates of wills in England, &c. evidence, when recorded in Antigua; for *personalty*, with secretary; for *realty*, with secretary and registrar.

Sect. 59. That proof, in the common form, of wills, under the seal of the Prerogative Court of Canterbury, or under the seals of any other Courts, of probate of wills in his Majesty's dominions hereinbefore mentioned, shall be allowed and taken, *primâ facie*, as good proof of such wills, both in law and equity, to prove *real* and *personal* devises and bequests within this island; such wills and probates being first recorded in the secretary's office of this island; and in case of devises of such realties, to be first recorded in both the registrar's and secretary's office of this island, with the probates; saving always the right of all

and every person to invalidate, disprove, or set aside, the same wills, by lawful or equitable causes, as though this act had not been made.

Warrant of attorney for confession of judgment to be left in secretary's office, at time of confession to be recorded.

Sect. 82. That from and after the date of this act, where any judgment shall be entered up on confession, *nihil dicit*, or *non sum informatus*, the counsel who confesses such judgment shall leave his warrant of attorney in the secretary's office of this island, in order to have the same recorded, at the time he confesses such judgment: or in default thereof, or in case it shall appear from such warrant of attorney that such judgment was irregularly confessed, such judgment, and the execution, if any issued thereupon, shall be of no force, virtue, or effect whatever; any law, usage, or custom to the contrary notwithstanding. And the said secretary, or his deputy, is hereby required to give to the counsel, who shall leave such warrant of attorney with him for the purpose aforesaid, an acknowledgment in writing, signed with his hand, of the receipt of such warrant of attorney, mentioning particularly, as near as may be, the day, hour, and minute he received the same.

Secretary to give receipt for warrant.

No execution on judgment dormant a year and day, without *scire facias*; except plaintiff restrained by injunction.

Sect. 84. That no execution shall issue upon any judgment which has lain dormant for the space of one year and a day, unless a *scire facias* shall issue thereon; *except* where the plaintiff has been held under injunction in Chancery, or order of the Court of Chancery, or by writ of error, and it shall appear by affidavit in writing, filed in the secretary's office, in case of such injunction, that the plaintiff was so held under injunction.

Conveyances void *as* to *creditors*, unless made for value.

Sect. 100. And all deeds, conveyances, and assurances, in writing or otherwise, of lands, tenements, goods, and chattels whatsoever, are hereby declared to be null and void *as to creditors;* unless the party or parties to whom the same is made make it appear, by legal proof, that he is actually and *bonâ fide* a purchaser for valuable consideration, really paid or secured, without any covin; or for other valuable considerations in law, according to the laws and statutes provided and made, before the settlement of this island, in such cases.

English statute, 3 W. & M. cap. 14, of *fraudulent devises*, in force in Antigua.

Sect. 101. And to prevent the defrauding of creditors, by fraudulent devises of lands, tenements and hereditaments, be it and it is hereby enacted by the authority aforesaid, that the statute made in England, the third year of our late sovereign lord and lady King William and Queen Mary, chapter the fourteenth, intituled, *An Act for the relief of Creditors against fraudulent Devises*, as extant in the same book [the Statutes at large], printed by the printers to the Crown, shall be of force for the future in this island, as to the devise of any person or persons dying after the date of this act; and such statute book shall be equal evidence as the record or inrolment could be, in all cases whatsoever within this island.

Trusts liable to executions, as in England under 29 Car. 2, cap. 3, with the difference that the *trusts* be sold as lands in execution, under s. 103, 104, 123, 124, 126, of this act,

Sect. 102. And for the better support of credit, be it enacted by the authority aforesaid, that from and after the date hereof, the *benefit* of *trusts* of lands, tenements, hereditaments, within this island, whether such trusts be now created or in being, or shall hereafter be created and in being, shall be liable to judgments and executions, and be assets in all respects, and the heir and other persons be chargeable therefore, in the same manner as such lands, tenements, hereditaments, and heirs, and persons are liable in England, by the statute made in the twenty-ninth year of the reign of our late sovereign lord Charles the

LAWS OF ANTIGUA.

and be liable in case of action, as *lands* under s. 101.

Second, chapter the third, intituled *An Act for prevention of Frauds and Perjuries*, as the same is extant in the statutes at large printed by the printers to the Crown; with the following alterations, that is to say, THAT the whole trusts in all the lands, &c. shall be sold, and execution be thereon done, as hereinafter directed, in case of lands, &c. respectively; and that such trusts shall be liable, *against any purchases thereof* in all respects, on the entry of an action, or suit in equity, as lands, tenements, hereditaments, and slaves, are *before* or after hereby made liable.

Estate for *another's life*, devisable, &c.

And all estates, *for the term of any other person's life or lives*, of lands, &c. within this island, shall be devisable, descend, and go, and be assets, in the same manner here as such estates in lands in England are directed by the same last-mentioned statute, as extant in the same printed statutes; SAVE ONLY, that no other kind of publication or execution, or other number of witnesses, shall be required for or to a will passing the same, than is required to wills by the laws and usages of this island.

Conveyances by marshal of *lands*, &c. sold in execution, to be at expense of purchaser and valid if recorded.

Sect. 127. And that conveyances of lands, &c. sold in execution, shall be made by the provost marshal, or his lawful deputy of this island, at the costs of the purchasers thereof; and shall be good for such estate, trust, equity of redemption, and interest therein, to such purchaser or purchasers, their heirs, executors, administrators, and assigns, as the party from whom they were taken by executions could have made or granted, or was entitled to, and no longer or otherwise; so always as the conveyances passing any such lands, &c. be acknowledged before the registrar of this island or his deputy for the time being, and duly recorded in the registrar's office as usual, and the laws of this island require.

Marshal, if required, to give purchaser possession.

Marshal's sale or certificate, not sealed, sufficient for *goods and chattels*.

And the marshal and his deputy shall, and are hereby required and empowered to, put all purchasers of lands in quiet possession, if required. And the marshal's or his deputy's sales or certificates only, not sealed, shall be good for other goods and chattels, to the purchasers, as far as the person or persons from whom they were taken had title.

Conveyance by marshal executed and acknowledged before register, effectual to bar entails, &c.

Sect. 128. And whereas deeds with acknowledgments to bar entails, reversions, and remainders, are become the common assurance to purchasers, mortgagees, and creditors, when executed pursuant to a certain General Act of the Leeward Caribbee Islands in America, passed in the reign of her late Majesty Queen Anne, intituled, *An Act for supplying the want of Fines and Recoveries in these Islands, and for making any Deed or Deeds, duly executed and acknowledged before any of her Majesty's Justices of her Court of Common Pleas, in the Kingdom of England or Ireland, or any of these Islands, equivalent to a Fine and Recovery, or Fines and Recoveries, duly and regularly levied and suffered in any of her Majesty's Courts of Record at Westminster*, dated at Nevis, the 21st June, 1705. Be it therefore enacted by the authority aforesaid, that all deeds of sale which shall be executed by the marshal, or his deputy, by virtue of this Act, if executed and acknowledged before the registrar of deeds of this island, shall be, to all intents and purposes, as effectual to bar entails, reversions, and remainders, of the lands, tenements, hereditaments, and rent-charges, with the appurtenances, issues, and increase, as if the tenant in tail, whose estate, right, title, or interest is sold, had at the time of the sale in all respects duly executed and

acknowledged a deed or deeds thereof, as required by the last recited general act, and had declared or limited the uses thereof, for valuable considerations, to the purchaser or purchasers thereof under the provost marshal, or his deputy, or his or their heirs or assigns, for ever. (Dated at Antigua, 21st January, 1791, 31 Geo. 3.)

No. 537.

An Act of Assembly of Antigua, intituled, *An Act to extend the Provisions of an Act made in General Council and Assembly of the Leeward Caribbee Islands, and passed in the Reign of Queen Anne, intituled,* 'An Act for supplying the want of Fines and Recoveries in these islands; and for making any deed or deeds, duly executed and acknowledged before any of her Majesty's justices of the Court of Common Pleas in the kingdom of England or Ireland, or of any of these islands, equivalent to a fine and recovery, or fines and recoveries, duly and regularly levied and suffered in any of her Majesty's Courts of Record at Westminster,' *by declaring the same Powers and Authorities in* ALL *of the Justices of her Majesty's Courts of King's Bench and of the Barons of Exchequer in England or Ireland, for receiving the acknowledgment of any Deed or Deeds executed before them, as are by the said recited Act vested in the Justices of the said Courts of Common Pleas in the said two kingdoms,* enacts, that, immediately from and after the passing and publication of this act, any deed or deeds, made and entered into by husband and wife, or by tenant in tail, general or special, or by any other party or parties by whom any interest is intended to pass, by force and operation of the act intituled, '*An Act for supplying the want of Fines and Recoveries,*' &c. such deed or deeds may be executed and acknowledged before any one of the judges or justices of his Majesty's Courts of King's Bench, or before any one of the judges or barons of his Majesty's Court of Exchequer, either in the kingdom of England or Ireland: and that every examination or examinations, acknowledgment or acknowledgments, of the party or parties, subscribed by such judge, justice, or baron, before whom he, she, or they did appear, shall be to all intents and purposes whatsoever, as valid and effectual in law to pass all and every estate, right, title, and interest, and claim of the party or parties, and of each of them, to such deed or deeds, as if the same was or were executed and acknowledged before any of the justices of the Court of Common Pleas, in either of the said kingdoms, as directed by the herein-recited act; anything to the contrary thereof in anywise notwithstanding. (Dated at St. Christopher's, 4th September, 1799, 39 Geo. 3.)

Deeds intended to pass estate under act of the Leeward Islands, No. 32, acknowledged before Justice of K. B. or Baron of Exchequer in England or Ireland, to be as valid, and examination of the parties as effectual, as if the transaction were before Justice of C.P. in England or Ireland.

No. 621.

[An act, 50 Geo. 3, (7th July, 1810), adopts the provisions of the English statute, 8 & 9 Will. 3, c. 31, respecting partition at law.]

[An act, 1 Geo. 4, provides for the administration of the estates of insolvent debtors.]

The laws of Antigua, like all other laws, have gradually attained their present improved state according to the wants and necessities of the subject; and as each subsequent law depends, to a certain extent, on the preceding laws, the extracts occupy a much greater number of pages than was expected at the commencement of the undertaking. The colonial laws being in the possession of only a few individuals, they are stated by way of extract in preference to giving the result, as it enables the reader to peruse the very law itself.

LAWS OF ANTIGUA.

[J. It may be useful in this place to give a brief summary of some of the laws relating to conveyances of real estates in the English colonial possessions in the West Indies and North America, especially those of Jamaica and Barbadoes (the most considerable of the British West India Islands). The reader will find the acts in question stated at length in a useful collection of colonial laws.—See Howard's Laws of the Colonies.J.]

LAWS OF JAMAICA.

LAWS OF JAMAICA RELATING TO CONVEYANCES, &c.

[Captured in 1655, and a regular government commenced in 1661. The use of the English law in the island was confirmed by the Jamaica act, 1 Geo. 2, c. 1, s. 22. See 2 & 3 Vict. c. 26.]

[The Statute of Frauds is in force in this island.]

Deeds acknowledged, or proved, and recorded within three months after date, valid without livery of seisin; but otherwise insufficient to pass estate for more than three years.

[J. Act 33 Car. 2, c. 12, provides, "that a deed in due form of law made, and within three months after the date thereof acknowledged by the party or parties that grant the same, or proved by the oath of one sufficient witness or more before the governor, or some one of the judges of the Courts of this island, and the same recorded at length in the office of inrolments, (which said office shall always be kept at St. Jago de la Vega), within the said three months, shall be valid to pass the same without livery of seisin, attornment, or any other act or ceremony in the law whatsoever; and that no deed hereafter made without such acknowledgment or proof and inrolment, shall be sufficient to pass away any freehold or inheritance, or to grant any lease for above three years."*J.]

[By sect. 4, a mortgagee, when paid off, is to enter satisfaction on the margin of the record of the mortgage, which shall be a discharge.]

[Act 33 Car. 2, c. 15, gave validity to charitable gifts and devises, made within twenty years.]

[By acts 33 Car. 2, c. 22, 4 Geo. 2, c. 4, and 14 Geo. 3, c. 5, the period of limitation of claims to real estate is seven years, with a proviso for disabilities. See *Beckford* v. *Wade*, 17 Ves. 87. By act 29 Geo. 3, c. 13, claims on bonds, mortgages, and other obligations, are to be made within twenty years.]

[By 33 Car. 2, c. 22, s. 3, conveyances by husband and wife, acknowledged before a judge in the island, and recorded there, have the effect of fine and recovery.]

[By act 25 Car. 2, c. 3, the governor is authorized to naturalize aliens, and existing titles of or through aliens are confirmed.]

Conveyances by husband and wife or any single person to operate as a fine or recovery.

[J. By the act 2 Ann. c. 7, it is enacted, "that all bills of sales and conveyances whatsoever, heretofore made and recorded, or such as shall be made hereafter by any persons out of this island, either by husband and wife or by any single person, who by law may make any such sale or conveyance, and acknowledged before the lord mayor of London, or any lord mayor or mayor of any other city within the kingdoms of England and Ireland, or before the governor or governors of any of her Majesty's islands or colonies for the time being, and duly recorded in this island, shall be good and valid in law against all persons whatsoever that can or may claim any manner of estate in the lands, tene-

* Amended by subsequent acts.

LAWS OF JAMAICA.

ments, or premises so conveyed, or to be conveyed, as fully, to all intents and purposes, as any lands or tenements in England might be passed by fine and recovery, duly levied and executed in any of her Majesty's Courts at Westminster."[J.]

[Act 10 Anne, c. 4, provides for indorsing the date of inrolment on deeds, &c.]

[Act 10 Anne, c. 12, gives validity to inrolled conveyances, although no valuable consideration is inserted, and gives the effect of a fine or recovery to all conveyances made for valuable consideration.]

[Act 8 Geo. 1, c. 5, relates to the proceeding by writ of partition, which is made conclusive on all persons who do not claim within a year.]

[J. Act 4 Geo. 2, c. 5, s. 3, makes exemplifications of wills made in Great Britain or the colonies, under the seal of any archbishop or of the mayor or bailiffs of the place where made and recorded in Jamaica, evidence of the originals.J.]

[Sect. 4 gives validity to deeds already made and inrolled, and sect. 4 directs deeds made in the island to be inrolled within ninety days.]

Deeds executed out of the island to be inrolled within twelve calendar months after date and within ninety days after the arrival of the ship.

[J. By sect. 7, all deeds and conveyances made and executed out of this island, for any lands, tenements, or hereditaments, within this island, from the first day of May, 1732, shall be duly proved or acknowledged and recorded or inrolled in the office of inrolments of this island, within six (which by act 16 Geo. 2, c. 5, is enlarged to *twelve*) calendar months after the dates of such deeds or conveyances, and within ninety days after the arrival of the ship which brought the same, otherwise to stand void with respect to other purchasers or mortgagees *bonâ fide* for valuable consideration as aforesaid; but still to preserve and maintain a right and title against the vendor or mortgagor, and his or their heirs, in case the first vendee or mortgagee shall at any time duly prove and record his or their deeds or conveyances, no second or other deed or conveyance being in the meantime proved or acknowledged and recorded or inrolled in favour of any other person or persons as aforesaid.J.]

Act 24 Geo. 2, c. 9. [31 Oct. 1751.] Reciting that doubts had arisen concerning letters of attorney acknowledged or proved before the mayor, &c. of any city, &c. in Great Britain,

and might also arise concerning deeds and conveyances so acknowledged, &c.

[J. 24 Geo. 2, c. 9, "*An Act for the better regulating of the Probate of Deeds and Conveyances, and Letters of Attorney, executed off this Island.*

"WHEREAS doubts have arisen concerning the probate or acknowledgment of letters of attorney before the mayor or other chief magistrate of any city, borough, or town corporate in Great Britain, by one or more witnesses subscribing, or by the party acknowledging the same, whether such letter of attorney so proved as aforesaid, is, or may be, sufficient to authorize the person or persons nominated and appointed in and by such letters of attorney to commence and prosecute any action or suit in any of the Courts of law or equity in this island, in the name of the party executing such letter of attorney, or to do any other act in pursuance thereof: AND WHEREAS doubts may also arise concerning the probate of deeds and conveyances made off this island, whether the probate of such deeds or conveyances, by the oath of one of the subscribing witnesses, or by the acknowledgment of the party before the mayor or other chief magistrate of any city, borough, or town corporate in Great Britain, and certified under the common seal of the same, are good and effectual in the law: AND WHEREAS there hath not been a sufficient

LAWS OF JAMAICA.

All deeds, conveyances, and letters of attorney, executed in Great Britain, and proved or acknowledged before the mayor or chief magistrate of any city, &c. to be good.

provision made for the probate of deeds, conveyances, or letters of attorney, in the kingdom of Ireland or in any of his Majesty's colonies in America: to remedy the aforesaid inconveniences, be it enacted, that all deeds, conveyances, and letters of attorney whatsoever, which have been or shall be hereafter executed in Great Britain, and proved by the subscribing witness or witnesses, or acknowledged by the party before the mayor or other chief magistrate of any city, borough, or town corporate in Great Britain, and certified under the common seal of such city, borough, or town corporate, shall be as good and effectual in the law, to all intents and purposes whatsoever, as if such deeds, conveyances, or letters of attorney had been respectively proved by the witness or witnesses subscribing the same, or had been acknowledged by the party before a judge of any Court of Common Pleas in this island, any law, custom, or usage to the contrary notwithstanding."

All deeds, &c., executed in Ireland, and proved or acknowledged before any mayor, &c., to be good.

Sect. 2. "That all deeds, conveyances, and letters of attorney, whatsoever, which have been or shall be hereafter executed in the kingdom of Ireland, or in any of his Majesty's colonies in America, and which have been or shall be hereafter proved by the subscribing witness or witnesses, or acknowledged by the party before any mayor or other chief magistrate of any city, borough, or town corporate, in the kingdom of Ireland, or before the governor or commander-in-chief of any of his Majesty's colonies in America, and certified under the common seal of such city, borough, or town corporate, in the said kingdom of Ireland, or under the seal of his Majesty's colonies, where the said deeds, conveyances, and letters of attorney, have been, or shall be, respectively executed, shall, and the same are hereby declared to be as good and effectual in the law for the purposes for which the same were, are, or shall be intended, as if such deeds, conveyances, and letters of attorney, had been respectively proved by the subscribing witness or witnesses, or acknowledged by the party before a judge of any Court of Common Pleas in this island, any law, custom, or usage to the contrary notwithstanding."[J.]

Deeds executed abroad.

[And as to the United States, see act 34 Geo. 3, c. 11, 1 Howard, 73. By act 42 Geo. 3, c. 26, all deeds executed off the island in the British dominions, proved or acknowledged before the governor of the place, and certified under the seal of the place, or the private seal of the governor, with an attestation annexed that there is no public seal, are to be good. And deeds executed by British subjects in any foreign state, and proved or acknowledged before the British envoy there, and certified under his official seal, or under his hand and private seal, are to be good. And married women are to be examined, and such examination certified as in Great Britain.]

[A deed executed in England for the purpose of barring an estate tail does not require to be acknowledged before the mayor. Proof by the witness of its execution is sufficient. 2 Burge, 760.]

[The deed is registered in the island upon being produced with the requisite certificate, and without any power of attorney from the grantor. 2 Burge, 760.]

[Act 2 Geo. 3, c. 8, restrains the effect of certain grants and devises to negroes or mulattoes.]

Mortgages to

[J.By act 13 Geo. 3, c. 16, intituled, *An Act for extending the Credit*

LAWS OF JAMAICA.

of this Island, and to encourage Foreigners to lend Money to the Inhabitants thereof, under certain Regulations, it is enacted, "that after the passing of this act it shall be lawful for all persons, being foreigners or aliens, to lend money, at lawful interest, upon the security of any freehold or leasehold estates in this island, and to hold the same as an effectual security for the money lent." [J.]

aliens for money lent to be valid. (23rd Septem., 1772).

[J. And, "that immediately after and on forfeiture of any such security made to such foreigner or alien, and non-payment of the money lent or becoming due upon any such security at the time therein stipulated and agreed upon, the legal estate upon which any such mortgage shall have been granted shall from thenceforth become vested in the President of his Majesty's Council, the Speaker of the Assembly, and the Chief Justice of this island for the time being, upon such trusts and for such uses, intents, and purposes as shall be expressed in the original conveyance or securities made to the foreigner or alien for the money lent. And it shall and may be lawful to and for all and every such foreigners or aliens, their heirs, executors, administrators, or assigns, to bring and prosecute, by themselves or their lawful attornies respectively, his, her, or their action or actions, bill or bills, in any Court of law or equity in this island, in the names of the trustees before mentioned, for the recovery of the monies lent and becoming due upon such securities, by sale or otherwise, as effectually as natural-born subjects may now do. And it shall be lawful for the said trustees, and they are hereby required, to allow their names to be used in bringing and prosecuting such action or actions, bill or bills, for the purposes aforesaid. Provided also, that no such foreigner or alien shall, by any means whatever, be entitled to obtain or enter into the actual possession of any such lands or estates, or to foreclose the equity of redemption thereof."* J.]

Special provision in case of forfeiture.

[By act 37 Geo. 3, c. 13, and subsequent acts, referred to, 1 Howard, 76, stamps are imposed on deeds, &c., wherever executed.]

Stamps.

[By the act, 42 Geo. 3, if the conveyance of a tenant in tail is not duly registered within the time, and the tenant in tail dies while it is unregistered, the issue are not bound. 2 Burge, 381. A mortgage in fee operates as an effectual bar of an estate tail, and all remainders over. *Barrett* v. *Lousada*, Grant's cases, 39.]

Tenant in tail.

[Interest at six per cent may be taken on mortgages of land in this or any other of the British colonies in the West Indies or America. *Vide infra*, Vol. 5, p. 395.]

[There are no bankrupt laws in force in any of the colonies. The insolvent act at present in force in Jamaica is the 4 Will. 4, c. 11; for an abstract of which, see 3 Burge, 645.]

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* [Statute 13 Geo. 3, c. 14, of the Imperial Parliament authorizes aliens to lend money at interest, not exceeding 5*l.* per cent., on security of any estate in any of his Majesty's colonies in the West Indies, whether the foreign state of which such alien is a natural-born subject be at war with this kingdom or not; and they are to have the same remedies for its recovery, except as to taking possession or foreclosing the equity of redemption, as British subjects. *Vide infra*, Vol. 5, p. 346.]

LAWS OF BARBADOES.

Dower.

As to the execution of deeds.

Conveyances by married women.

Fine levied in England recorded in Barbadoes to be valid.

Deed acknowledged before mayor, &c. to be a good conveyance by married women.

LAWS OF BARBADOES.

[Settled in 1605. The wife is dowable only out of lands of which the husband *dies* seised; so that dower never interferes with the sale of lands in this island. Act 1 Car. 2, 11 Sept. 1649, No. 31.]

[J. By act 2 Car. 2, "a deed in due form of law made, and within three months after the date thereof acknowledged before the resident governor for the time being, or before some other of the chief judges for the time being of some one of the courts of justice within this island, by all the parties that pass or grant away a lease for above the term of three years, or any freehold or inheritance, by such deed, or by so many of them as there shall be living, or by any other person or persons lawfully authorized under hand and seal to convey or grant the same, (so that the same be recorded at length in the secretary's office of this island within three months), shall be valid to pass the same *without livery, attornment, or any other act or ceremony whatsoever*. And that no deed hereafter, without such acknowledgment and inrolment, shall pass any estate of freehold or inheritance, or any lease above the number of three years.

"Item: That if any married woman shall be minded to alien her jointure, dower, or any other her estate of freehold or inheritance within this island, or any part thereof, whether it be joint or in severalty, and do make any writing under her hand and seal to convey the same, and come before the governor or any other chief judge of some of the courts of justice within this island to acknowledge the same, then such governor or judge shall acquaint her what she is to convey by the same writing, and for what estate, and shall in private demand of her whether she be willing to the same, and whether she doth it freely and voluntarily, and not for fear or by reason of any threats or menaces; and if she then confess she doth it freely and uncompelled by fear or otherwise, then shall her acknowledgment of the said writing be received, and the day of such acknowledgment with the governor or judge's name before whom such acknowledgment was taken, to be indorsed and subscribed, and thenceforth such writing shall become valid and firm against her and all that shall claim the lands, tenements, or hereditaments therein mentioned to be granted, for or under her or in right of her. And also, that a fine levied in England by a married woman of her jointure or title of dower, or other freehold or inheritance here in this island, being brought over and entered on record here, shall be valid as if the same were levied in England." J.]

[J. By stat. 11 Car. 2, s. 4, it is enacted, "that if any man and his wife, of full age, or woman sole, by their deed of sale or any other instrument sufficient to that intent, if residing in England, Scotland, or Ireland, or any other of his Majesty's dominions, shall appear before any of his Majesty's judges of any court of law, or mayor of any city or corporation, or before the chief governor of any island or place where they live and inhabit, and shall acknowledge the same, in which acknowledgment the woman do declare her voluntary and free consent, without threats or force of her husband, and the same shall be so sent over, and truly certified under the seal of the judge, mayor, corporation, or governor of this island, and recorded here at length in the secretary's

office within twelve months then next after such acknowledgment, shall be as effectual to convey the land therein contained as if the same had been done in this island." J.]

[The same act authorizes married women to pass their estates and rights by deeds acknowledged by them before the governor or a chief judge of the island; provides for the inrolment of conveyances; establishes the widow's right to dower, and makes the period of limitation of claims to real estate five years, except in case of disability.]

[By act of 11 Car. 2, married women and their husbands are authorized to pass lands by deed, acknowledged before any judge of any Court of law, or mayor of any city or corporation in Great Britain or Ireland, or before the chief governor of any British possession, and certified under the seal of such judge, &c., and inrolled within a year.]

[Act 5 Geo. 2, limits actions on specialties to twenty years, except in case of disability.]

[Act 17 Geo. 2, "in order to point out a regular and more legal practice for the future," gives validity to deeds antecedently executed by attornies in their own names.]

[Act 2 Geo. 4, for the relief of insolvent debtors, gives preference to judgments, &c., anterior to the discharge of the prisoner, on which discharge his estate vests in the Remembrancer of the Court of Exchequer of the island.]

Statute of Frauds.

[J. By act of 2 Geo. 3, intituled, *An Act for prevention of Frauds and Perjuries*, estates in land, &c., not granted by writing signed by parties making the same, or their agents thereunto lawfully authorized, (except leases for three years at rack rents), are to have force only of estates at will. No interest in lands, &c., to be assigned or surrendered except by writing signed by person making same, or his agent, authorized by writing or by operation of law.

Contract, on sale of land, &c., to be in writing, and signed by party to be charged, or his agent.

Devises of land, &c., to be entirely written by testator, *or* to be in writing and signed by him or some other person in his presence and by his directions, and attested by *two* witnesses. Wills of land, &c., to be revocable only by another will or codicil, or other writing of testator, signed before two witnesses, declaring same, or by cancellation.

Declarations or creations of trusts of lands, &c., to be in writing, signed by the party, or by his will in writing; except those arising by implication of law.

Grants and assignments of trusts to be in writing, and signed by grantor or assignor. Nuncupative will of estate exceeding £30 to be void, unless proved by oath of three witnesses, and unless testator bid some person testify such as his will; and unless made at deceased's last sickness, and in his abode where he dwelt ten days before, except he were taken ill from home and died before his return.

After six months from speaking the testamentary words, no testimony thereof to be received, except same put in writing in six days after making said will. Witnesses good on trial at law, competent to prove nuncupative will.

No letters testamentary, or probate of nuncupative will, to be granted till fourteen days after testator's death, nor as to such will till widow and next of kin be cited.

LAWS OF BARBADOES.

No will of personal estate revocable verbally, except same were put in writing and read to and acknowledged by testator. This to be proved by two witnesses. Not to affect wills of soldiers and mariners in actual service.

Exemplification of wills, letters testamentary and of guardianship, duly authenticated and allowed by the governor, to be good proof of originals. Powers of attorney from executor or guardian residing in Great Britain, or any British colony, to be good.

English stat. 25 Geo. 2, c. 6, vacating devises to witnesses, (see this act stated 1 Jarm. Pow. Dev. 116), to be in force in Barbadoes.

DOMINICA.

LAWS OF DOMINICA.

[Conquered in 1759, and formally ceded in 1763; taken by the French in 1778, and restored, 1783.]

[The Statute of Frauds is in force here.]

[J. By act of 10 Geo. 3, all deeds are to be recorded in the Registrar's Office of the island, if executed in Europe, within twelve months, (unless lost), such execution to be in the presence of and acknowledged before the chief magistrate of any city or town corporate in Great Britain or Ireland, and certified under the common seal or in the presence of two witnesses, to be proved by the oath of one of them before the chief magistrate as aforesaid; certificate to be indorsed on the deed, and any party who is *feme covert* to be privately examined, and such examination indorsed; which said deed being recorded, to have the force of a fine or recovery. Deeds to be in the English language. Wills to be recorded.

All deeds *made in the island*, and recorded, to operate without livery and seisin.

By acts 12 & 14 Geo. 3, deeds recorded, though after the time limited by a former act, to be valid against prior unregistered deeds.

By act 58 Geo. 3, letters of attorney, executed in Great Britain or Ireland, may be proved by the witness or witnesses thereto before the chief magistrate of any city, &c., making and signing an affidavit of the execution thereof; which being certified and transmitted to the island under the common seal, and the affidavit so subscribed by the witness or witnesses, and the certificate, annexed to the said letter of attorney, being to be valid proof thereof.

By act 3 Geo. 4, any person being tenant in tail and entitled by the laws of England to suffer a valid recovery, or if absent from the island, his or her attorney on record duly authorized, may appear before the Court of Common Pleas in the island, in term time, and producing the deed or will creating the entail, and also the deed to be inrolled, acknowledge before the Court the execution thereof; which shall be recorded, and the Court shall order that unless cause shewn before the last day of term, the deeds so acknowledged shall be inrolled for the purpose of barring all estates tail, &c.; deeds so inrolled, and being duly recorded, to pass estates in fee simple.J.]

TRINIDAD.

LAWS OF TRINIDAD.

[Settled by the Spaniards in 1498, surrendered to England, 1797.]

[J. By a proclamation by the governor, dated 5th February, 1814,

LAWS OF TRINIDAD.

certain formalities are prescribed for the execution of instruments within the island, and all instruments made out of the island to be taken to the office of the secretary or registrar, before whom the parties, or their attorney or attornies, shall acknowledge the same; such acknowledgments to be certified by the secretary, or his deputy; registrar, if required, to make a copy of the deed, and return the original to the parties.

By order of the king in council, dated 6th April, 1818, all deeds executed in Great Britain to be executed in the presence of two witnesses, and proved by the oath of one of the witnesses before a judge or magistrate, and to contain a power "to one or more persons in Trinidad, jointly, or severally, to appear before the secretary and registrar of the illustrious Cabildo, or his lawful deputy, in the said island, and in the name of the party or parties thereto, to acknowledge and declare the said deed, act, or instrument, to be the act and deed of the person or persons, party or parties to the said deed, act, or instrument." Power of attorney to be recorded as required by Proclamation of the 5th of February, 1814.[J.]

[By the usage of the island married women are invested with many of the powers of femes sole; and by order of the king in council, dated 16th September, 1822, the property of married women is made liable to those debts contracted in separate trading, and provisions are made in favour of creditors against voluntary settlements.]

GRENADA.

LAWS OF GRENADA.

[Settled in 1650 by the French; surrendered to England in 1762; captured by the French in 1779, and restored in 1783.]

[J. By the act of 7 Geo. 3, deeds affecting lands in Grenada and the Grenadines, executed in Europe, are to be recorded in the registrar's office of Grenada, within twelve months, unless lost at sea, or intercepted; and if executed in Great Britain or Ireland, to be acknowledged or proved by the oath of one of the subscribing witnesses before the chief magistrate of any city or town corporate: Certificate to be indorsed on the deed. If any *feme covert* be a party, to be privately examined, such examination to be indorsed on the deed, and attested by the chief magistrate: which deed to have the same force as a fine or recovery.

No will to be admitted as evidence unless recorded; copies of recorded wills, and deeds attested by registrar, to be good evidence.

By another act, 7 Geo. 3, cattle, horses employed upon plantations, coppers, &c., are declared real estate, and the widow to be dowable in the same manner as in the case of lands of which her husband died seised; and by act 10 Geo. 3, they are to be chattels for the payment of debts.

By another act, 10 Geo. 3, deeds, which had been executed but not recorded in due time, are to be void only against subsequent purchasers and mortgagees.J.]

[By act 10 Geo. 3, the English Statute of Frauds is adopted.]

[J. By act 24 Geo. 3, deeds executed by a husband and wife, or by tenant in tail, acknowledged before some of his Majesty's Justices of the Court of Common Pleas in England or Ireland, shall be as effectual

LAWS OF GRENADA.

and valid as if such parties had levied a fine or suffered a common recovery; *femes covertes* to be privately examined by the judge; such examination to be indorsed, together with the acknowledgment of the party from whom the interest passes, and subscribed by the judge; such deeds to be recorded as required by the existing laws; but the acknowledgment subscribed by the judge to be sufficient proof of execution.J.]

[Another act of the same year empowers the Court of Chancery of the island to dispense with the execution of conveyances by parties out of the jurisdiction in cases of sales by order of Court. By an act, 31 Geo. 3, provision is made for levying executions upon real estate, and the substance of English enactments against fraudulent conveyances and devises is adopted.]

LAWS OF ST. VINCENT.

ST. VINCENT.

[Conquered in 1662, taken by the French in 1779, and restored to England in 1783.]

[The Stat. of Frauds is in force here.]

[By act of 7 Geo. 3, a deed executed by husband and wife, or by tenant in tail, and acknowledged by the grantors before a justice of the Court of Common Pleas, in England, Ireland, or St. Vincent, is to have the effect of a fine, with proclamations, or a recovery. *Femes covertes* to be examined, and deed to be inrolled at length, in the island within six months after acknowledgment, or if executed in England or Ireland, to be inrolled in the Court of Chancery there. An exemplification or attested copy of the record to be evidence where the original is mislaid, and cannot be produced.]

[By act 12 Geo. 3, any judge of a court similar to the Court of C. P., in any part of the British dominions, is authorized to take acknowledgments.]

[J.By act of 10 Geo. 3, all conveyance of lands, executed out of the island, (except in certain contiguous islands), are to be acknowledged before the registrar within twelve months, or to be valid against purchasers only from the time of acknowledgment; or a duplicate within two years, if the original be either lost or destroyed; and where the parties executing any deed do not personally appear before the registrar, or his deputy, he, she, or they to appoint one or more attorney or attorneys expressly for that purpose under hand and seal, either in the body of, or indorsed upon, or annexed to, the deed; and the execution of the deed, and the power of attorney, to be proved on oath by one of the subscribing witnesses before the chief magistrate of some city or town corporate in Great Britain or Ireland, and certified under the seal of such corporation. The time of acknowledgment to be deemed to be the time of registry.

All instruments recorded in the registrar's office to be equal to a livery and seisin; and office copies to be evidence.

By act of 26 Geo. 3, all conveyances, deeds, and powers of attorney, made out of the Island of St. Vincent, and the Islands of Bequia, and such other of the Grenadines as lie to the northward of Cariacou, or accounts of debts, &c., which shall be produced in any court of justice within these islands, with the deposition proving the same, before

any mayor or chief officer of any city or town corporate, and attested under the public seal, shall be evidence, the deeds being duly recorded.J.]

THE BAHAMA ISLANDS.

LAWS OF THE BAHAMA ISLANDS.

[Settled by the English first in 1629, again in 1666.]

[J.By statute 4 Geo. 3, c. 1, deeds affecting real or personal estate may at the election of the party be inrolled at the secretary's office in the town of Nassau, or to be void against subsequent purchasers, duly inrolling, &c.J.]

[By act 40 Geo. 3, c. 2, the common law of England is declared to be in force in the island, except as to the ancient feudal tenures, &c.; and a list of English statutes to be in force in the island is given. Among these are the statutes De Donis, of Fines (4 Hen. 7, c. 24); Uses (27 Hen. 8, c. 10); Partition (32 Hen. 8, cc. 1, 23).; the Enabling Statute (32 Hen. 8, c. 28); Fines (32 Hen. 8, c. 36); Wills (34 & 35 Hen. 8, c. 5); Limitations (21 Jac. 1, c. 16); Frauds (29 Car. 2, c. 3); Annuities and Rents (8 Anne, c. 14); Apportionment (11 Geo. 2, c. 19), &c.]

[J.By statute 46 Geo. 3, c. 16, all conveyances, powers of attorney, or other deeds executed in Great Britain or Ireland, and acknowledged before any chief magistrate of any city, &c., and certified and transmitted under the common seal, may be recorded by the secretary; deeds first registered to have priority.]

[Deeds executed abroad, except in the United States, and acknowledged before a British envoy, and if none, before the chief magistrate or judge, and certified under seal, to be recorded.]

[J. By stat. 51 Geo. 3, c. 15, deeds executed by husband and wife, acknowledged before a judge of the King's Bench or the Common Pleas in England or Ireland, to have the same force as a fine or common recovery; provided that the wife be privately examined, and the acknowledgment of the execution by the party or parties executing the same, and the examination of the wife, be indorsed and subscribed by the judge.J.]

[By statute 2 Geo. 4, c. 32, provision is made for the probate of deeds executed in the United States.]

THE BERMUDA ISLANDS.

LAWS OF BERMUDA.

[Settled in 1609.]

[The Statute of Frauds is not in force here. *Sheddon* v. *Goodrich*, 8 Ves. 481.]

[By act 6 Anne, a period of limitation of claims to land of twenty years is established with a saving in case of disability.]

[J.By acts 19 & 43 Geo. 3, deeds executed by married women and their husbands for any lands in these islands are to be as effectual as if such woman had not been under coverture; provided such woman confess that she executed the same without compulsion of her husband, before a commissioner to be appointed by the Chief Justice of the Court of King's Bench, Common Pleas, and Assize, and such confession under the hand and seal of the commissioner be indorsed and the deed be recorded within six calendar months after execution.J.]

LAWS OF BERMUDA.

[An act 22 Geo. 3, takes away the effect of collateral warranties and warranties by tenants for life.]

[J.By act 26 Geo. 3, persons holding mortgages are to give in to the secretary's office the names of the mortgagor and mortgagee, the date, particular property, and sum secured, and on neglect to be postponed to subsequent mortgagee complying with the act.J.]

[By act 27 Geo. 3, real estates are made subject to debts in the same manner as personalty.]

[An act 29 Geo. 3, empowers the owners in tail of small parcels of land to disentail them.]

[By an act 39 Geo. 3, fines and recoveries are made good notwithstanding irregularities.]

[An act 46 Geo. 3, disables negroes from holding real estate.]

TOBAGO.

LAWS OF TOBAGO.

[Colonized by the Dutch in 1632—taken by the English in 1666—by the French soon afterwards—surrendered to England, 1762—taken by the French, 1781—taken by the English, 1793—restored at the peace of Amiens, 1802—retaken, 1803.]

[The Statute of Frauds is in force here.]

[J.By statute 8 Geo. 3, all deeds to be recorded in the registrar's office, if executed in Europe, within fifteen months after execution (unless lost at sea); and if executed in Great Britain or Ireland, to be executed in the presence of two witnesses, and acknowledged before the chief magistrate of any city, &c., and transmitted under the seal of the corporation, or proved by one of the witnesses before such magistrate; if any *feme covert* be a party, to be privately examined, and such examination indorsed and attested by the magistrate, and the said deed being recorded, shall have the force of a fine or recovery.

By acts 2 Geo. 4 and 8 Geo. 3, horned cattle, horses, and asses attached to plantations, and also mules, boilers, stills, and still-heads, and other plantation utensils, are declared to be real estate.

By act 13 Geo. 3, no deeds to be void for want of being recorded within the time specified by the former act, otherwise than against purchasers and creditors who shall have recorded their securities and without notice.

By act 2 Geo. 4, horned cattle, horses, and asses employed upon plantations, descend to the heirs at law and are subject to dower.

Act 3 Geo. 4, declares all stores from Europe, supplies furnished in the colonies, and salaries, shall be a preferable lien to any other incumbrance if sued for as therein mentioned.J.]

MONTSERRAT.

LAWS OF MONTSERRAT.

[Settled in 1632. The Statute of Frauds is in force in this island.]

[By act 3 Geo. 2, claims to land are to be made within seven years unless in case of disability.]

[The act 26 Geo. 2, adopts most of the provisions of the English Statute of Frauds.]

[J.By act of 28 Geo. 2, a memorial of deeds and conveyances and wills is required to be registered, or is declared to be void against sub-

LAWS OF MONTSERRAT.

sequent purchasers or mortgagees; memorial to be in writing, and in case of deeds to be under the hand and seal of some or one of the grantors or grantees, his, her, or their executors or administrators, guardians or trustees, attested by two witnesses, one whereof to be one of the witnesses to the execution, which witness shall, upon his oath, prove the signing and sealing of such memorial; and in case of wills, devising lands, under the hand and seal of some or one of the devisees, his or their heirs, executors, or administrators. Memorial to contain the date, names, and description of the parties, testator, and witnesses, the description of the lands contained in the deed or will, and as to mortgages, the consideration. The original to be produced with the memorial to the registrar. Memorials executed off the island may be so proved by affidavit, sworn by the witness before a Judge, or a Master in Chancery, ordinary or extraordinary, in England or Ireland, or a chief magistrate of a city or town in the United Kingdom, and certified under the seal of such place, or the official seal of such chief magistrate. Where a conveyance or security is made by more than one writing, the lands need be named in memorial of only one such writing, and a reference thereto in the other will be sufficient. Memorials of wills may be registered if testator die in the island within six months; if in any of the Leeward islands, within twelve months; or if elsewhere, within three years after his death.

If impediment exist to registering such will within such times, and a memorial of the impediment be registered within such times, and a memorial of the will be registered within six months after removal of such impediment, such registry sufficient.

If will concealed or suppressed, no purchaser or creditor prejudiced, except will registered within three years after testator's death.

If memorial of recognizance registered in registrar's office in twelve calendar months after acknowledgment, cognizor's lands to be bound.[J.]

[Deeds may be registered at length upon proof by one of the witnesses.]

ST. CHRISTOPHER'S.

LAWS OF ST. KITT'S.

[Jointly settled by the English and French about 1623. In 1702 the French were expelled.]

[J. By statute 2 Geo. 2, all assurances and wills concerning lands are required to be registered at Basterre, if executed beyond the seas, within two years after the execution, or the death of testator, or to be void against purchasers or mortgagees, except as to mortgages, which are to be registered within one year; deeds executed beyond the seas to be acknowledged by the parties executing, before one of the justices of the King's Bench and Common Pleas of the island, or before the chief magistrate or officer of the land, island, or place where executed.J.]

NEVIS.

LAWS OF NEVIS.

[Settled in 1628.]

[By act 32 Car. 2, sugar mills, coppers, and stills, once affixed to the freehold, were directed to remain so. But by 10 Wm. & Mary, such articles are made chattels for all purposes.]

[By act 2 Anne, seven years' possession gives a good title, except against minors, &c.]

LAWS OF NEVIS.

[J. By act 2 Geo. 3, all conveyances and wills affecting lands to be registered in the secretary's office, having been acknowledged or proved by the oath of one of the subscribing witnesses before one of the justices of the Court of King's Bench and Common Pleas of the island, or one of the barons of the Court of Exchequer in Great Britain or Ireland, or before the chief magistrate of the place where executed.

Wills to be registered within two years after the death of devisor dying beyond the seas: unregistered deeds, &c., to be void against purchasers.J.]

[By act 54 Geo. 3, a deed acknowledged before a judge of the supreme court at Fort William or at Madras, or before the recorder or judge of any court of Bombay, is to have the effect of a fine or recovery.]

LAWS OF UPPER CANADA.

UPPER CANADA.

[The Statute of Frauds was received as part of the English law on the establishment of this colony.]

[By the 27 Geo. 3, c. 7, a wife may bar her dower by release without the sanction of her husband.]

[J. By an act of the provincial parliament of the 32 Geo. 3, cap. 1, deeds and wills are required to be memorialized.J.]

[By act 35 Geo. 3, c. 5, registry offices for deeds and wills are established. The method of registry is by memorials.]

[A certificate of payment given by a mortgagee, and registered, operates as a release and reconveyance of the estate. *Ib.*, and 4 Will. 4, c. 16.]

[By act 37 Geo. 3, c. 8, deeds of bargain and sale not inrolled, but registered, are made valid.]

[J. By act of 53 Geo. 3, memorials executed in Great Britain or Ireland may be registered, in case an affidavit, sworn before the chief magistrate of any city, borough, or town corporate, be brought to the registrar, wherein one of the witnesses to the execution of the deed shall have sworn to the execution thereof and of the memorial; to be certified under the seal of such city, &c. And in case of wills, one of the witnesses to the memorial shall prove the execution of the memorial. Registrar to give the party bringing such deed, &c., a certificate of registry.J.]

[No time is limited for the registry, but priority of registration confers priority of title.]

[J. By act 59 Geo. 3, *femes covertes* may, by deed jointly with their husbands, alien real estate, she appearing before the mayor or chief magistrate of any city, &c., and being examined; a certificate whereof under the seal of such city, &c., to be indorsed and signed by the chief magistrate; such examination and certifiate to be made within twelve months from the date.J.] [See also 2 Geo. 4, c. 14, 2 Howard, 48.]

[The provisions of the recent English statutes for shortening the time of prescription, limitation of actions, and amendment of the law of inheritance and dower, have been adopted in the act 4 Will. 4, c. 1; and by the same act, s. 48, in all grants and devises to several persons not upon trust, words indicative of an intent to confer an estate in joint tenancy are required to prevent a tenancy in common. By

sect. 51, land may be devised by a will, executed in the presence of and attested by two witnesses in the presence of each other; and it is not required that they shall sign in the presence of the testator. Such a will may pass after-acquired real estate, s. 49. And by sect. 50, an indefinite devise confers the fee.] LAWS OF UPPER CANADA.

[There is a saving in the above act of the rights of persons, under grants from the Crown of unreclaimed lands; as to which the period of twenty years is not to commence running until the land is occupied by the grantee, until he has notice of adverse occupancy.]

NOVA SCOTIA.

LAWS OF NOVA SCOTIA.

[Discovered and settled about 1497. Ceded by the French at the peace of Utrecht, (31st March, 1713).]

[Acts 32 Geo. 3, c. 2; 34 Geo. 2, c. 4; 12 Geo. 3, c. 5; 29 Geo. 3, c. 9; and 3 Geo. 4, c. 1, provide for the registry of deeds at length, on proof by a subscribing witness. Deeds to have priority according to the date of registration. Deeds executed in the United Kingdom, or in any British colony, to be acknowledged or proved before justice of the peace of the place, and attested by him, such attestation to be attested under the hand and seal of a public notary, or of the governor; or, if in the United Kingdom, under the seal of some corporation, or by the certificate of a notary.] Registry.

[Act 32 Geo. 2, c. 11, amended by 34 Geo. 2, c. 5, and 30 Geo. 3, c. 5, adopts the provisions of the English Statute of Frauds as to wills. On intestacy the widow to have her dower, and one-third of the personalty; and the eldest son, or his issue, to take a double portion of the real and personal estate, and the residue to be divided among the other children. Any advanced shares to be brought into hotchpot. If no issue, widow to have her dower, and half of the personalty; the residue of realty and personalty to go to the next of kin, or their representatives. No representation among collaterals, after brother's or sister's children. If no widow, all to the children or next of kin. The lands of which the widow is endowed, to be divided after her death, as other lands. Land to be sold for payment of debts or legacies, if personalty insufficient.] Distribution of real and personal estate.

[Acts 32 Geo. 2, c. 15, and 13 & 14 Geo. 3, c. 4, provide for the payment of debts out of real estate by a kind of elegit, or by sale.]

[Act 32 Geo. 2, c. 18, adopts most of the provisions of the Statute of Frauds.]

[Act 32 Geo. 2, c. 24, limits the time for bringing suits at law or in equity to twenty years, except in cases of disability.]

[Act 34 Geo. 2, c. 8. The mere registry of lots of land in Halifax to give a title in fee.]

[Acts 3 & 4 Geo. 3, c. 5; 53 Geo. 3, c. 14, and 57 Geo. 3, c. 1, contain provisions for the relief of insolvent debtors.]

[Acts 7 & 8 Geo. 3, c. 2; 8 & 9 Geo. 3, c. 10, and 13 & 14 Geo. 3, c. 2; and 31 Geo. 3, cc. 1 and 10, provide for the partition of lands.]

[Act 11 Geo. 3, c. 6. Wife to be examined as to her consent to deed for passing her dower.]

[Act 55 Geo. 3, c. 14, provides a substitute for a common recovery, by moving the Supreme Court for leave to acknowledge deeds of lease and release, &c.]

LAWS OF NOVA SCOTIA.

[Act 4 Geo. 4, c. 3, enables married women to pass their estates by deeds acknowledged before a judge of a Court within the province, or of a Court of record elsewhere.]

LAWS OF NEW BRUNSWICK.

NEW BRUNSWICK.

[Settled at the same time with Nova Scotia, ceded by the French at the peace of Utrecht, being part of Nova Scotia; created a distinct province in 1784. By act 31 Geo. 3, c. 2, the laws passed in the general assembly of Nova Scotia previously to the separation, are declared to have no force in the province.]

egistry, &c.

[By acts 26 Geo. 3, c. 3, and 52 Geo. 3, c. 20, deeds and wills are directed to be registered at length, or to be void against subsequent purchasers and mortgagees, whose deeds are first registered. Time of registry to be indorsed. The execution of deeds to be proved by oath of witness before the registrar or a judge of the Supreme Court, or of Court of Common Pleas, or to be acknowledged by grantor before such persons, or a justice of the peace. If grantor live abroad, the acknowledgment or proof to be had before a British envoy there, and certified on the deed by his hand and seal, or, if in the United Kingdom, before a judge of King's Bench, Common Pleas, or Exchequer, or Master in Chancery in England, or judge or lord of Session in Scotland, or judge of any British Supreme Court, or governor of a colony, chief magistrate of, and certified under the seal of, a city, borough, or town corporate, or the seal of office of such chief magistrate, such acknowledgments or proofs to be registered with the deeds. If grantor die before acknowledgment, witness may prove the execution in like manner. Upon certificate of payment of mortgage, attested by two witnesses, satisfaction to be entered on the record, which shall amount to a complete discharge. The words "grant, bargain, and sell," in any registered deed, to be equivalent to express covenants for title, limited to the grantor's own acts. Deeds duly acknowledged and proved to be effectual without livery of seisin or other ceremony. Copies of records to be evidence where originals destroyed. Wills to be registered within six months from the death of the testator, if it happened within the province, or three years if upon or beyond the seas, and within one year if elsewhere. If party disabled from registering will, a memorial of the impediment to be registered, and the will to be registered within six months from the removal of the disability.]

Wills, and intestacy.

[Act 26 Geo. 3, c. 11, adopts the provisions of the Statute of Frauds as to devises. Real estate to be distributed on intestacy, saving the widow's dower, so that the heir at law shall receive a double portion, and the residue be divided among the other children (including those of the half blood), or their representatives, or, being none, the next of kin. Children advanced to bring their shares into hotchpot. Real estate to be sold for payment of debts and legacies, if personalty insufficient.]

[36 Geo. 3, c. 12, and 4 Geo. 4, c. 19, provide for the payment of debts out of real estate by sale during the debtor's life.]

[Act 26 Geo. 3, c. 14, adopts most of the provisions of the English Statute of Frauds.]

LAWS OF NEW BRUNSWICK.

[Acts 27 Geo. 3, c. 9, 32 Geo. 3, c. 2, 33 Geo. 3, c. 5, and 52 Geo. 3, c. 20, enable a married woman, by deed acknowledged by her before the persons, and proved in the manner, provided by the registry acts already mentioned, with a certificate of her examination indorsed, to pass her title to dower or real estates in her own right.]

[Act 36 Geo. 3, c. 4. Tenant in tail of land, the reversion of which is not in the Crown, may, by deed duly made, authenticated, and registered, convey an estate in fee; and a conveyance, purporting to pass the fee, is to have the effect of a fine or recovery. If the grantor is coverte, her examination is to be taken.]

[Acts 50 Geo. 3, c. 7, and 52 Geo. 3, c. 19, provide for the partition of lands.]

NEWFOUNDLAND.

LAWS OF NEWFOUNDLAND.

[As to this colony, see Clark's Colonial Law; and *Att.-Gen. of Newfoundland* v. *Ryan*, 1 E. F. Moore, 87.]

PRINCE EDWARD'S ISLAND.

LAWS OF PRINCE EDWARD'S ISLAND.

[Discovered and settled about 1497; given up by the French in 1758, and formally ceded in 1763.]

[The Statute of Frauds is in force in this island.]

[J. By act of 20 Geo. 3, conveyances or mortgages of lands executed in Great Britain or Ireland, or duly attested copies thereof, are to be recorded at full length in the registrar's office within two years from the date, or to be void, except against the grantor or grantees.J.]

[An act 21 Geo. 3, c. 2, authorizes the devise of real estate by will attested by three witnesses.]

[By act 21 Geo. 3, c. 17, the period of limitation of claims to real estate is fixed at twenty years.]

[The act 26 Geo. 3, c. 2, contains provisions as to the real estates of insolvent debtors.]

[By act 26 Geo. 3, c. 9, land is made liable for payment of simple contract debts. See 35 Geo. 3, c. 8.]

[By act 35 Geo. 3, c. 2, seven years' possession upon a lease or purchase gives a good title to land, the title being registered.]

[By act 36 Geo. 3, c. 3, married women may bar their dower by deed acknowledged before a judge or justice of the peace in the island.]

[By act 49 Geo. 3, c. 4, letters of attorney to execute deeds are required to be registered at length.]

[By act 59 Geo. 3, c. 9, deeds acknowledged and registered are to have the effect of a fine or recovery. Acknowledgment before a judge of the Common Pleas in England or Ireland, a lord of Session in Scotland, or a judge of the supreme court of a colony, sufficient.]

[By 1 Geo. 4, c. 1, *femes covertes* are empowered to bar their dower by deed acknowledged before a judge of a court of record, Master in Chancery, or justice of the peace in the British dominions; the certificate, if taken in England, being authenticated by the usual affidavit, and certificate under seal of a public notary, and if acknowledged in a British colony, by certificate under hand and seal of the Governor, and if the *feme* live in a foreign country, she to acknowledge the deed before a British envoy, to be certified under his hand and seal.]

LAWS OF PRINCE EDWARD'S ISLAND.

[J. An act of 25 Geo. 3, cap. 1, requires all deeds concerning lands in the island, except leases not exceeding twenty years, or a memorial thereof, to be registered within the time specified by the 20 Geo. 3.

The same act requires that the execution shall have been acknowledged by the grantor himself, or proved by the oath of one of the subscribing witnesses before one of his Majesty's justices of the peace, at the place where the same was executed, and duly attested by such justice; such attestation being also authenticated under the public seal of some corporation, or by the attestation and certificate of some notary public, certifying that such person so subscribing as a justice of the peace is really and truly so, and that faith and credit is and ought to be given to all such attestations. See act 41 Geo. 3, c. 5.J.]

[By act 3 Will. 4, c. 10, repealing the former act, similar, but more complete, provisions are made for proof of deeds executed abroad, which is to be according to the forms generally used in the place. Copies of the registry are made evidence.]

[A bargain and sale duly authenticated and registered passes the land without delivery.]

[Constructive notice of unregistered deed is not to defeat the title under an instrument duly registered.]

Commissioners in bankruptcy to convey bankrupt's colonial property.

[J. By the English Bankrupt Act (6 Geo. 4, c. 16, s. 64), it is enacted, that the commissioners shall, by deed indented and inrolled in any of his Majesty's Courts of Record, convey to the assignees, for the benefit of the creditors, all lands, tenements, and hereditaments (except copy of customaryhold) in England, Scotland, Ireland, or in any of the dominions, *plantations or colonies*, belonging to his Majesty, to which any bankrupt is entitled, and all interest to which such bankrupt is entitled in any of such lands, tenements, or hereditaments; and of which he might, according to the laws of the several countries, dominions, *plantations or colonies*, have disposed, and all such lands, tenements, and hereditaments as he shall purchase, or shall descend, be devised, revert to, or come to such bankrupt before he shall have obtained his certificate; and all deeds, papers, and writings respecting the same, and every such deed shall be valid against the bankrupt and against all persons claiming under him: *Provided that where, according to the laws of any such plantation or colony, such deed would require registration, inrolment, or recording, the same shall be so registered, inrolled or recorded, according to the laws of such plantation or colony. And no such deed shall invalidate the title of any purchaser for valuable consideration prior to such registration, inrolment, or recording, without notice that the commission has issued.*J.]

But deed to be registered according to the laws of the colony.

[And now, by the stat. 1 & 2 Will. 4, c. 56, s. 26, the appointment of the assignee or assignees operates to vest such estate in them without any conveyance; and by s. 27, a certificate of the appointment of the assignee or assignees is to be registered if necessary, and as regards the colonies within twelve months.]

40. MEMORIAL *of an* ANNUITY *to be inrolled in* CHANCERY (*a*). 40. MEMORIAL.

A MEMORIAL of an annuity to be inrolled in her Majesty's High Court of Chancery. (*Fill up the form ante*, p. 81, *with such alterations therein as the nature and circumstances of any particular case may reasonably require* (*b*)). (*Vide ante*, p. 95).

(*a*) If the annuity be charged on land or lands within any of the registry acts, whether the grant be or be not within the exception of the Annuity Act, a memorial should be registered in the particular registry. *Vide infra*, tit. REGISTRATION. So, if the estates charged be in Ireland, the deed should be registered at the office in Dublin, or at the Irish Register Office in Southampton Buildings, London, although Ireland is not within the Annuity Act.

(*b*) Stamp, £1. Stamp.

41. RELEASE *of an* ANNUITY *on a* REPURCHASE, *and* ASSIGNMENT *of the* TERM *to* MERGE; *where the Repurchase-money is paid at the Time, or has been previously paid: or* ASSIGNMENT *to keep the Annuity and Term on Foot,* IN TRUST *for the Grantor: or* ASSIGNMENT *of Part of the Lands, and of the Judgment, to enable the Grantor to sell Part of his Lands freed from the Annuity and Judgment: or* REASSIGNMENT *of Leaseholds, or* RECONVEYANCE *of Freeholds, freed from the Trusts for securing the Annuity.* 41. RELEASE AND RECONVEYANCE ON REPURCHASE, &c.

THIS INDENTURE, made &c., BETWEEN [*grantee*], of &c. (*a*), of the first part; [*trustee*], of &c., of the second Parties.

(*a*) If a married woman be entitled to an annuity, by way of rentcharge, granted out of a *freehold* interest, either in fee or in tail, or for her own life, or for the life of another person, she should be a party to As to release or conveyance of annuities of marriedwomen.

41. RELEASE AND RECONVEYANCE ON REPURCHASE, &c.

part; and [*grantor*], of &c., of the third part (*b*). WHEREAS (*recite grant of annuity for the life of the grantor, and demise to trustee, ut ante*, p. 163 (*c*)). AND WHEREAS (*d*) the said [*grantor*] hath contracted with the said [*grantee*] for the repurchase of the said annuity, £——, at or for the price or

Recital of contract for repurchase.

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the release with her husband, the deed of course being duly acknowledged. But if the rent-charge be a chattel interest, as for years determinable on a life or lives, the husband alone may convey or release it, as he might release his wife's annuity granted for a life or lives, out of a *chattel real*, whether limited to her heirs, or to her executors. *Vide Butt's case*, 7 Co. 25, a; *ante*, pp. 9, 12. So, if a personal annuity for life or lives be limited to a married woman, her executors, &c. Aliter, if it were limited to her and her heirs.

ASSIGNMENT OF TRUST FOR GRANTOR.

(*b*) If it be intended to keep the annuity and term on foot, in trust for the grantor, *vide ante*, p. 163.

Bond, judgment, and memorial should be vacated.

(*c*) The bond should be cancelled and delivered to the grantor, (*ante*, p. 43); and the grantee should execute a warrant of attorney to acknowledge satisfaction on the judgment, and sign a satisfaction piece to be entered in the inrolment office, *ut post*.

PARTIAL ASSIGNMENT.

(*d*) If it be only an assignment of part of the lands comprised in the term, and an assignment of the judgment to enable the grantor to sell part of his lands free from the annuity and judgment, *vide ante*, p. 168.

PREVIOUS REPURCHASE.

If the annuity has been previously repurchased without taking a release, &c. at the time, say,

Recital of previous repurchase.

"AND WHEREAS the said [*grantor*], by virtue of the power contained in the said indenture, repurchased the said annuity on the —— day of —— last past, and then paid unto the said [*grantee*] all arrears thereof, and also the sum of [*consideration-money*], in full, for the absolute repurchase of the same; as he the said [*grantee*] doth hereby admit and acknowledge; and of and from the same respectively, and every part thereof, doth acquit, release, and for ever discharge the said [*grantor*], his heirs, executors, and administrators, and every of them, by these presents: *And* thereupon the said indenture was delivered up to the said [*grantor*]; but no actual release or surrender of the said annuity, or of the hereditaments and premises comprised in the said term of ninety-nine years, hath been made or executed by the said [*grantee*] and [*trustee*] respectively. NOW THIS INDENTURE WITNESSETH, that, for the considerations aforesaid, and also in consideration of ten shillings to the said [*grantee*] already paid by the said [*grantor*]: *He* the said [*grantee*] *doth* grant," &c.

Testatum, where there has been a previous repurchase.

sum of £——. And whereas all arrears of the said annuity of £—— have been paid and discharged by the said [*grantor*], up to and including the day of the date of these presents, as the said [*grantee*] doth hereby admit and acknowledge. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract, and in consideration of the sum of £——, of lawful British money, to the said [*grantee*] paid by the said [*grantor*], at or before the sealing and delivery of these presents; the receipt whereof the said [*grantee*] doth hereby acknowledge, and doth admit the same to be in full for the repurchase of the said annuity; and of and from the same and every part thereof doth acquit, release, and for ever discharge the said [*grantor*], his heirs, executors, and administrators, and every of them, by these presents; *He* the said [*grantee*] *doth* (*e*) by these pre-

41. RELEASE AND RECONVEYANCE ON REPURCHASE, &c.

Recital that all arrears have been paid.

First testatum.

Grant and re-

(*e*) There are two other modes of releasing an annuity, besides that here pursued.—1st. To "remise, release, and quit claim" *the annuity* to the grantor, without the word "grant;" which is proper where the legal estate *in the land* is clearly vested in the grantor, so that the annuity may merge. 2nd. "To acquit, release, and discharge" the land, and the grantor in respect of it, from the payment of the annuity. But these modes are sometimes objected to, as they may extend to release other interests, which the annuitant may possibly have in the property. The above form is free from this objection; and although the legal estate in the land may not be in the grantor of the annuity, still, by the operation of the word "grant," the annuity will vest in him, and his equitable estate be discharged from it.—Sand. MS.

Other modes are sometimes adopted.

Advantages of the above form.

Another form.

"*He* the said [*grantee*] by these presents *doth* grant, remise, release, and for ever quit claim, unto the said [*grantor*], his heirs and assigns, The said annuity of £——, granted (limited) or secured to him the said [*grantee*], by the hereinbefore in part recited indenture of release, during the natural life of the said [*grantee*]; *To the intent* that the said [*grantor*], his heirs and assigns, and the said messuages, &c. in and by the said indenture of release granted and released and charged with the payment of the said annuity, may be for ever hereafter released and discharged therefrom; and of and from all powers and remedies for recovering and enforcing payment thereof; and of and from all and all manner of actions and suits, claims, demands, and pretensions whatsoever, for or on account thereof, or in any wise relating thereto."

Grant and release of annuity, to the intent to free the lands therefrom.

The

41. RELEASE AND RECONVEYANCE ON REPURCHASE, &c.

sents grant, remise, release, and for ever quit claim, unto the said [*grantor*], his heirs, executors, administrators, and assigns, ALL THAT the said annuity, of £——, so granted and secured to the said [*grantee*], his executors, administrators, and assigns, for and during the (*g*) life of the said [*grantor*], in and by the said indenture as aforesaid: *And* all arrears and future payments thereof, with all powers of distress and entry, and all other remedies whatsoever for recovering the same: AND ALSO all the right, title, interest, trust, property, benefit, claim, and demand whatsoever, both at law and in equity, of him the said [*grantee*], of, in, to, or out of the said annuity, by virtue of the said indenture, or otherwise howsoever: *To the intent* that the same annuity may be merged and extinguished in or consolidated with the freehold of the said hereditaments and premises, and to or for no other use, trust, intent, or purpose whatsoever. AND THE SAID [*grantee*] doth hereby, for himself, his heirs, executors, and administrators, covenant with the said [*grantor*], his heirs and assigns, that he the said [*grantee*] hath not made, done, executed, or committed any act, deed, matter, or thing whatsoever,

lease of annuity to grantor tenant for life.

All arrears and powers.

All right, &c.

To the intent that the annuity may merge.

Covenant by grantee of annuity that he has not incumbered.

The second form above referred to.

Release of the lands and grantor from payment of annuity.

"*He* the said [*grantor*] by these presents *doth* remise, release, and for ever quit claim and discharge, ALL and singular the messuages or tenements, lands and hereditaments, mentioned and comprised in the hereinbefore recited indenture, and thereby charged with the payment of the said annuity of £——; *And also* the said [*grantor*], his heirs, executors, administrators, and assigns, and the lands, tenements, goods, and chattels of him, them, and each of them, of and from the said annuity of £——, and of and from all arrears, dues, and payments in respect thereof; and of and from all powers and remedies for the recovery of the same; and also of and from all actions, suits, accounts, reckonings, claims, and demands whatsoever, for or on account, or otherwise in respect, of the said annuity, or the arrears thereof, or of any part thereof respectively, or of any security given or executed for the same, or of any other matter or thing whatsoever relating thereto. AND THE SAID" &c. (*covenant by grantee that he has not incumbered*).

FOR YEARS DETERMINABLE.

(*g*) "Said term of ninety-nine years, determinable as aforesaid."

whereby or by reason or means whereof the said annuity, or any part thereof, is, can, shall, or may be impeached, charged, or incumbered, or in any way affected; or whereby or by reason or means whereof he the said [*grantee*] cannot or ought not to grant and release the said annuity unto the said [*grantor*], in manner aforesaid, and according to the true intent and meaning of these presents. AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, and also in consideration of the sum of ten shillings to the said [*trustees*] already paid by the said [*grantor*], (They *or* He) the said [*trustees*], at the request, and by the direction of the said [*grantee*], testified by his sealing and delivering these presents, by these presents (*do*, and each of them) *doth* bargain, sell, assign (*h*), surrender, and release, unto the said [*grantor*], ALL THOSE the messuages or tenements, lands, hereditaments, and premises, comprised in the said term of ninety-nine years, with the rights, members, and appurtenances thereunto belonging, or in any wise appertaining: AND all the estate, right, title, interest, term and terms for years now to come and unexpired, property, claim, and demand whatsoever, both at law and in equity, of him the said [*trustee*] (*or* them the said [*trustees*], (or any) (or either) of them) of, in, to, or out of the same hereditaments and premises, and every or any part

41. RELEASE AND RECONVEYANCE ON REPURCHASE, &c.

Second testatum.

Surrender of term by one trustee, or by two or more.

Parcels.

All the estate, &c.

(*h*) If the premises be leasehold, and were assigned to the trustees for the whole term, say,

REASSIGNMENT OF LEASEHOLD.

"transfer, and set over, unto the said [*grantor*], his executors, administrators, and assigns, ALL THOSE, &c. AND all the estate, &c., TO HAVE AND TO HOLD the same messuages, tenements, lands, and premises, with their and every of their appurtenances, unto the said [*grantor*], his executors, administrators, and assigns, henceforth, for and during all the residue and remainder now to come and unexpired of the said term of —— years; *Freed* and absolutely discharged of and from the trusts and purposes declared thereof in and by the said indentnre of the —— day of ——; and of and from all claims and demands in respect thereof."

Habendum of leaseholds for remainder of term, freed from annuity.

If the fee is in the trustees, they should reconvey to the grantor, *ut ante*, p. 243, *mutatis mutandis; Habendum*,

RECONVEYANCE OFFICE.

"TO THE USE of the said [*grantor*], his heirs and assigns; *Freed* and absolutely discharged," &c.

Habendum of freeholds, freed from annuity.

41. RELEASE AND RECONVEYANCE ON REPURCHASE, &c.

thereof, under or by virtue of the said indenture, or otherwise howsoever (*i*): *To the intent* that the said term of ninety-nine years may be merged in or consolidated with the reversion or freehold of the same hereditaments and premises therein comprised; and to or for no other use, trust, intent, or purpose whatsoever (*k*). AND THE SAID [*trustee*] doth hereby, for himself, his heirs, executors, and adminstrators, covenant with the said [*grantor*], his heirs and assigns, that he the said [*trustee*] hath not made, done, executed, committed, or willingly or knowingly suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the messuages or tenements, lands, hereditaments, and premises respectively hereby assigned or otherwise assured, or intended so to be, or any part thereof, or the said term of ninety-nine years therein, are, is, can, shall, or may be conveyed, assigned, impeached, charged, or in any manner incumbered or affected. IN WITNESS (*l*) &c.

To the intent that the term may merge.

Covenant by trustee that he has not incumbered.

(*i*) An *habendum* in a surrender is informal, *ante*, p. 170, n. (*a*).

Habendum for surrender informal.

(*k*) If there be two or more trustees, say,

TWO OR MORE TRUSTEES.

"AND each of them the said [*trustees*], so far as respects his own acts and deeds only, but not further or otherwise, doth hereby separately for himself and his heirs, executors, and administrators, covenant with the said [*grantor*], his heirs and assigns, that they the said covenanting parties respectively have not at any time," &c.

Covenant by two or more trustees, that they have not incumbered.

(*l*) Stamp, *one pound fifteen shillings*, with progressive duty of *one pound five shillings*. For, by the 55 Geo. 3, c. 184, s. 31, "The releases and other conveyances of annuities or rent-charges made in the original grant thereof, subject to be redeemed or repurchased, shall, on the repurchase thereof, be exempted from the *ad valorem* duty hereby imposed on conveyances on the sale of any property, and shall be charged only with the ordinary duty on deeds or instruments of the like kind, not upon a sale." According to the prevailing opinion, this exemption extends to conveyances on a repurchase of an annuity, *in trust* for the person repurchasing.

Stamp.

Releases and conveyances of annuities, &c. exempted from the *ad valorem* duty on the repurchase.

42. SURRENDER *of a* COPYHOLD *Estate, subject to a* CONDITION *making it void, on the due Payment of an* ANNUITY, *or on* REPURCHASE; *where the Estate belongs to a* MARRIED WOMAN, *or to a Customary Tenant in Fee, or for Life; taken, by the Lord, or Steward, or Customary Tenants, and made in person, or by Attorney, with Forms of* EXEMPLIFICATION *on the Court Rolls of* TRUSTS *for Sale, &c.* (*a*)

42. SURRENDER OF COPYHOLDS, EXEMPLIFICATION OF TRUSTS, &c.

MANOR OF ELING. } BE IT REMEMBERED, that out of Court, on the —— day of ——, [*grantor*] (*b*), of &c., and [*wife*] his wife, (she the said [*wife*] being first examined

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(*a*) See an outline of the practice as to copyhold securities for annuities, *ante*, p. 220. The surrender should generally be actually made before the consideration-money is paid, for the reasons there stated; but more especially where the estate belongs to a married woman. Practice.

(*b*) If the surrender be made by attorney, say, BY ATTORNEY.

"[*grantee*], of &c., one of the customary tenants of the said manor, by [*attorney*], of &c., his attorney, duly constituted by a deed-poll, under the hand and seal of the said [*grantor*], bearing date on or about the —— day of ——, &c., which is exemplified on the court rolls of this manor, in consideration of the sum of £—— of lawful British money, by [*grantee*], of &c., to the said [*grantor*] previously paid, (*or* to the said [*attorney*]*, as the agent of the said [*grantor*] by virtue of a power contained in the said deed-poll, then well and truly paid), SURRENDERED into the hands of the lord of the said manor, by the rod, according to the custom of the said manor, by the acceptance of [*steward*], steward of the said manor, (*or* and by the personal acceptance of the lord), ALL" &c. Consideration paid to grantor's attorney.

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* If the attorney receives the money, there should be an express authority for that purpose in the power of attorney, which should also contain a declaration that his receipt shall be a sufficient discharge.

42. SURRENDER OF COPYHOLDS, EXEMPLIFICATION OF TRUSTS, &c.

apart from her husband by (*c*) [*steward*], gentleman, steward of the said manor, and consenting), in consideration of the sum of £ —— of lawful British money, [*grantee*], of &c., to the said [*grantor*], in hand then paid, SURRENDERED into the hands of the lord of the said manor, by the rod, by the (*d*) hands and acceptance of the said (*e*) steward, ALL THAT messuage or tenement, with the cottages, lands, hereditaments, and premises thereunto belonging, situate and being at ——, within the said manor, and commonly called or known by the name of ——, with their and every of their rights, members, and appurtenances; which hereditaments and premises descended to the said [*wife*], as the only child and customary heir of [*father*], late of &c., deceased: AND ALSO all the estate, right, title, interest, property, claim, and demand whatsoever of them the said [*grantor*] and [*wife*], his wife, and each of them, of, in, to, or out of the said hereditaments and premises, and every part thereof: To THE USE AND BEHOOF of [*trustee*], of &c., his heirs and assigns (*g*), for ever, at the will of the lord, according to the custom of the said manor: *Nevertheless* UPON CONDITION, that if the said (*h*) [*grantor*] and [*wife*] his wife, or either of them, or the heirs, executors, or administrators of them or either of

To the use of trustee.

On condition.

TAKEN BY THE LORD.

(*c*) "The lord himself in person, and consenting," &c.

TAKEN BY CUSTOMARY TENANTS.

"[*A. B.*] and [*C. D.*], two of the customary tenants of the said manor, and consenting" &c.

BY THE LORD.

(*d*) "Personal acceptance of the said lord, ALL" &c.

BY CUSTOMARY TENANTS.

(*e*) "[*A. B.*] and [*C. D.*], ALL THAT" &c.

FOR LIFE.

(*g*) "For and during the life of the said [*grantor*], at" &c.

FOR YEARS DETERMINABLE.

If for years determinable on the grantor's death, omit the clause of "ALL the estate," &c., and say,

"for and during the term of ninety-nine years, if the said [*grantor*] should so long live, at the will of the lord," &c.

LIFE ESTATE. For ninety-nine years, determinable on grantor's death.

(*h*) "If the said [*grantor*] should pay unto the said [*grantee*], his executors, administrators, or assigns, for and during the term of ninety-nine years, if the said [*grantor*] should so long live, *One*" &c., *ut supra, omitting in the surrender the clause for paying proportional part, but retaining it in the bond, ut ante*, p. 173; *and also in the covenant, ut ante*, p. 346.

them, should, from time to time, during the (*i*) life of the said [*grantee*], pay unto the said [*grantee*], or his assigns, *One* annuity or clear yearly sum of £—— of lawful British money, to commence, or be considered as commencing, from the —— day of —— next preceding the date of the above surrender, by equal half-yearly payments, on &c., in every year, clear of all deductions on any account whatsoever; *And* should make the first payment of the said annuity on the —— day of —— next ensuing the date hereof; provided the said [*grantee*] should be then living: *And* in the event of the death of the said [*grantee*], between or in the interval of any of the said half-yearly days of payment, and either before or after the said —— day of —— next, if the said [*grantor*] and [*wife*], his wife, or either of them, or the heirs, executors, or administrators of them, or either of them, should pay unto the executors, administrators, or assigns of the said [*grantee*], such part of the said annuity of £——, as should be in proportion to the time or number of days which, inclusive of the day of the decease of the said [*grantee*], should have elapsed prior to his decease, and after the day of payment next and immediately preceding that event, or, as the case should require, next after the —— day of [*commencement*] last, if the said [*grantee*] should die prior to the said —— day of —— next: And if the said [*grantor*] and [*wife*], his wife, or either of them, or the heirs, executors, or administrators of them, or either of them, should pay such proportional part of the said annuity, as soon after the decease of the said [*grantee*], as demand shall be made thereof by the executors, administrators, or assigns of the said [*grantee*], and clear of all deductions whatsoever: Or if the said [*grantor*] and [*wife*] his wife, or either of

42. SURRENDER OF COPYHOLDS, EXEMPLIFICATION OF TRUSTS, &c.

(*i*) "During the term of ninty-nine-years, if the said [*grantee*] should so long live, pay unto the said [*grantee*], or or his assigns, *One*" &c.

FOR YEARS DETERMINABLE ON GRANTEE'S DEATH;

"during the term of ninety-nine years, if [*nominees*], of &c., (any or) either of them should so long live, pay unto the said [*grantee*], his executors, administrators, or assigns, *One*" &c.

ON NOMINEE'S DEATH.

Other conditions of surrenders for securing annuities may be the same, *mutatis mutandis*, as the conditions of bonds for the same purpose, *ut ante*, p. 175, &c.

42. SURRENDER OF COPYHOLDS, EXEMPLIFICATION OF TRUSTS, &c.

them, or the heirs, executors, or administrators of them, or either of them, should, at any time after the expiration of three years, to be computed from the said —— day of —— last, be desirous of repurchasing the said annuity of £——: and should give the said [*grantee*], or his assigns, three calendar months' notice in writing of such his or their desire; and should, upon the expiration of the said notice, or at any time afterwards, upon giving three calendar months' such notice as aforesaid, pay unto the said [*grantee*], or his assigns, the sum of £—— of lawful British money; and also all and every sums and sum of money which should be then due for or on account of the arrears of the said annuity, and also a proportional part of the same annuity, up to and inclusive of the day of repurchasing the same; and all sums of money, if any, which shall be then due, for or on account of any costs, charges, or expenses occasioned by the non-payment of the said annuity; *Then*, and in either of the said cases, the above surrender to be void and of no effect, otherwise to be and remain in full force and effect (*k*). AND (*l*) it was previously to the said surrender, agreed and declared between and by the said [*grantor*] and [*wife*], his wife, and the said [*grantee*] and [*trustee*], in and by an indenture, bearing date on or about &c., and made between the said [*grantor*] and [*wife*], his wife, of the first part; the said [*grantee*], of the second part; and the said [*trustee*], of the third part (*m*);

Reference to grant.

Distress and entry not given.

(*k*) A power of distress is not usually given on copyhold premises, *ante*, p. 46; a power of entry cannot be given, *ante*, p. 49.

As to inserting the trusts in the surrender.

(*l*) It is generally desirable to have the trusts, as well as the condition inserted in the surrender, and consequently on the court rolls, (*ante*, p. 220). However, if the parties do not wish it, the trusts may be omitted. [The usual course is not to state the trusts for sale in order, by shortening the surrender, to save expense.] Sometimes the trusts are referred to in the surrender, thus, "Upon such trusts, &c. as are declared in a certain indenture," &c., without mentioning them. But it would be wrong in the steward to receive such a surrender; for he has a right to call for a specification of the trusts, or to refuse that any reference whatever shall be made to them on the court rolls. See *Kensington* v. *Mansell*, 13 Ves. 244.

(*m*) The above trusts seem to be generally preferable, because they meet the circumstance of the case, as well before as after the condition of the surrender is broken, and whether the surrenderee be or be not admitted; for in some manors the lord may compel his admission. *Vide*

that the said [*trustee*], his heirs and assigns, should stand seised and be possessed of the hereditaments and premises so surrendered to him and them as aforesaid, UPON (*n*) THE TRUSTS, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements thereinafter expressed and declared of and concerning the same: and that the said [*grantor*] should, so far as in him lay, cause such declaration of trust to be inserted upon the rolls of this manor, for the better preserving and evidencing the same: NOW THEREFORE, on the prayer of the said [*grantor*] and [*wife*], his wife, and with the consent of the said [*grantee*] and [*trustee*], the declaration of trust contained in the said indenture is, by the favour of the lord, thus inrolled:

42. SURRENDER OF COPYHOLDS, EXEMPLIFICATION OF TRUSTS, &c.

Exemplification on the court rolls of

"UPON TRUST, to permit and suffer the said [*grantor*] and [*wife*], his wife, and the heirs and assigns of the [*wife*], to

trusts for sale after forty days' default in payment;

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ante, p. 223. But the forms in the above respect are various; sometimes the following is used:

"that in case default should be made in payment of the said annuity of £——, according to the condition of the said surrender, then he the said [*trustee*], his heirs and assigns, should hold and be seised and possessed of the hereditaments and premises hereby surrendered, UPON THE TRUSTS, and to and for the intents" &c.

Trusts on breach of condition,

In which case add the exemplification of the trusts, &c., thus:

"UPON TRUST, by and out of the rents," &c., "or by mortgage or sale," *ut ante*, p. 202.

to raise annuity out of the rents, or by sale, &c.

(*n*) If the trusts be declared by reference to those declared of freehold lands, &c., say,

TRUSTS BY REFERENCE,

"UPON, under, and subject to the same, or the like trusts, provisions, regulations, declarations, and agreements, as are therein expressed and declared of and concerning a certain term of one thousand years in the freehold lands and hereditaments thereby demised, or as near thereto as might be, and the nature of the estate of the said [*trustee*], his heirs or assigns, would admit."

to trusts of a term for one thousand years;

In which case add the exemplification of the trusts, &c., thus:

"UPON TRUST, that in case" &c., *ut ante*, p. 342.

Or if it be of a life estate in remainder, by reference to previous trusts, *ut ante*, p. 325.

or of a life estate in remainder.

42. SURRENDER OF COPYHOLDS, EXEMPLIFICATION OF TRUSTS, &c.

receive," &c. *ut ante*, p. 210, *to the words, page* 215, "without his or their wilful default." *Varying the form if the estate be the wife's property*, ut ante, p. 230.

TAKEN (*o*), the day and year first above written by me,

E. F. { Lord of the said Manor.

or
G. H. { Steward of the said Manor.

or by us
A. B.
C. D. { Two of the customary tenants of the said Manor.

(*To be signed here by the grantor and his wife, where the estate belonged to her; by grantee, and trustee.*)

(*If by attorney,*) [*party*] by [*attorney*] his attorney.

Stamp.

When not secured by actual grant or conveyance.

(*o*) By the 55 Geo. 3, c. 184, tit. CONVEYANCE, (p. 1572), "Where *upon the sale of any annuity or other right not before in existence*, the same shall not be created by actual grant or conveyance, but shall only be secured by bond, warrant of attorney, covenant, contract, or otherwise; the bond, or other instrument by which the same shall be secured, or some one of such instruments, if there be more than one, shall be deemed and taken to be liable to the same duty, as an actual grant or conveyance." When there is a conditional surrender of copyholds, to become absolute on non-payment of an annuity, the annuity does not issue out of the estate; *vide ante*, p. 12, 46; nor is it created by actual grant or conveyance; and therefore either the bond, warrant of attorney, or deed of covenant, may be stamped with the *ad valorem* duty, at the election of the parties. See the fourth subsequent provision of the act.

Where copyholds are charged with other property;

And where copyhold or customary lands or hereditaments are charged together with other property for securing the same annuity, under the above-mentioned provisions, and the provisions of the act, p. 1590-1, the whole *ad valorem* duty should be charged on the deed relating to the other property. In all which cases the copyhold surrender should be on a *one pound* stamp: and if with the trusts, &c. the surrender should contain thirty folios or upwards; then for every entire quantity of fifteen folios contained therein, over and above the first fifteen folios, a further *progressive* duty of *one pound* (pages 1575-6).

collateral security.

However, it is proper to apprise the reader, that under a previous part of the act (page 1571), it has been supposed that the surrender, or the memorandum thereof, if made out of Court, or the copy of court roll of the surrender, if made in Court, is to be deemed the principal instrument, where it is made subject to a condition to become absolute on non-payment of an annuity. But as that part of the act is qualified by the above-mentioned express provisions, it seems that the construc-

42. SURRENDER OF COPYHOLDS, EXEMPLIFICATION OF TRUSTS, &c.

tion alluded to is erroneous. The object of the legislature appears to have been to secure an immediate payment of the *ad valorem* duty; but the covenant to surrender might never be performed, and indeed frequently the surrender is not made for months afterwards, and sometimes not at all; in which case the revenue would be defrauded.

[In the admittance of a surrenderee in trust for A., A. was described as an annuitant by bond of the purchaser, and subject to the security to A., the admittance was in trust for the purchaser. It was held sufficiently stamped with an *ad valorem* stamp in respect of the purchase-money; the stamp in respect of the annuity being presumed to have been properly affixed to the bond or other security. *Doe* d. *Chapeau* v. *Reynolds*, 2 Nev. & M. 383.]

43. WARRANT OF ATTORNEY TO CONFESS JUDGMENT.

43. WARRANT OF ATTORNEY *to confess Judgment in any of the Courts at Westminster, or in Ireland, with or without a Bond; and with or without a Surety; and* DEFEAZANCE *to a Warrant of Attorney for securing an* ANNUITY, *with power on default in payment to take out execution for the Arrears, or for the whole Debt confessed, and after paying the Arrears to invest the Residue of the Money levied, to answer the future Payments of the Annuity.*

TO [*attornies*], gentlemen, attornies of her Majesty's Court of —— (*a*), at Westminster, jointly and severally, or to any other attorney of the same Court.

THESE are to desire and authorize you the attornies above-named, or any one of you, or any other attorney of the Court of —— aforesaid, to appear for me (*b*) [*grantor*], of ——, in the county of ——, in the said Court, forthwith, and then and there to receive a declaration for (*c*) me, in an

In Queen's Bench, in an action of debt with a bond.

(*a*) "In Ireland jointly," &c.

IRELAND.

(*b*) "us [*grantor*], of &c., and [*surety*], of &c., either jointly or severally, in the said Court," &c. *ut supra.*

SURETY.

(*c*) "Us, either jointly or severally, in an action," &c.

In the other instances alter the form to the plural number.

43. WARRANT OF ATTORNEY TO CONFESS JUDGMENT.

action of debt (*d*) for [*double the consideration-money*], [for money borrowed], at the suit of [*grantee*], of &c., his executors or administrators; and thereupon to confess the same action; or else to suffer judgment by *nil dicit*, or otherwise, to pass against me (*e*) in the same action, and to be thereupon forthwith entered up against me (*e*) of record of the said Court, for the said sum of [*double the consideration-money*], besides costs of suits (*g*). AND I the said [*grantor*] do hereby further authorize and empower you the said attornies, or any one of you, after the said judgment shall be entered up as aforesaid, for me and in my name, and as my act and deed, to sign, seal, and execute a good and sufficient release in the law to the said [*grantee*], his heirs, executors, and administrators, of all and all manner of error and errors, writ and writs of error, and all benefit and advantage thereof, and all misprisions of error and errors, defects and imperfections whatsoever, had, made, committed, done, or suffered, in, about, touching, or concerning the aforesaid judgment; or in, about, touching, or concerning any writ, warrant, process, declaration, plea, entry, or other proceedings whatsoever, of or any way concerning the same.

General warrant.

AND for what you the said attornies, or any one of you, shall do, or cause to be done in the premises, or any of them, this shall be to you and every one of you a sufficient warrant and authority.

Testimonium.

IN WITNESS whereof I have hereto set my hand and seal, the —— day of —— [in the —— year of the reign of our sovereign lady Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith; and] in the year of our Lord ——

ON BOND.

(*d*) "In an action of debt, on a bond or obligation, bearing even date herewith, and made and entered into by me the said [*grantor*], to [*grantee*], of &c., in the penal sum of [*double the consideration-money*], at the suit of the said [*grantee*], his executors or administrators: and thereupon" &c.

A bond seems to be an unnecessary expense, when there is a covenant. *Vide post.*

(*e*) "Us."

(*g*) See as to warrants of attorney, *infra*, tit. WARRANT OF ATTORNEY.

43. WARRANT OF ATTORNEY TO CONFESS JUDGMENT.

Attestation.

SIGNED, SEALED, AND DELIVERED by the above-named [*grantor*], in the presence of me, [*attorney*], of &c., the attorney of the said [*grantor*], expressly named by him in that behalf, who as such attorney hereunto subscribe my name (*h*).

[*grantor*] L. S.

(*h*) [*Vide* stat. 1 & 2 Vict. c. 110, ss. 9, 10; *infra*, Vol. 5, p. 29.] The stamp is *one pound* where the *ad valorem* stamp has been affixed to some collateral security; but where it has not, the warrant of attorney should have the same stamp as a grant of an annuity. 55 Geo. 3, c. 184, Sched. part I. titles, CONVEYANCE and WARRANT OF ATTORNEY, and Sched. part II.

Stamp.

44. DEFEAZANCE (*a*) *to be indorsed on a Warrant of Attorney for securing an* ANNUITY.

44. DEFEAZANCE INDORSED ON WARRANT OF ATTORNEY.

Collateral security for an annuity for

[*grantee*] v. [*grantor*] MEMORANDUM that the (*b*) within-written warrant of attorney (*c*) is given as a security collaterally with an indenture bearing even date

(*a*) [By a rule of the Courts of Queen's Bench and Common Pleas, M. T. 42 Geo. 3, and by a rule of the Court of Exchequer, M. T. 43 Geo. 3, (2 East, 136; 3 Bos. & P. 310; Man. Exch. Pr. Append. 225), the defeazance, or a memorandum of its substance or effect, must be written on the same paper or parchment on which the warrant of attorney is written; and the mere tying of the warrant and defeazance together would not be a compliance with this rule. See *Barber* v. *Barber*, 3 Taunt. 465; Id. 324; *Shaw* v. *Evans*, 14 East, 576; *Aircton* v. *Davis*, 3 M. & Sc. 138; 1 & 2 Vict. c. 110, s. 60; and *infra*, title WARRANT OF ATTORNEY.]

(*b*) The above seems to be the most usual form; but sometimes the defeazance

DEFEAZANCE UNDER WARRANT.

(*c*) If there be a bond also, say,

" and the within (*or* above) mentioned bond or obligation are given as securities collaterally " &c.

ON BOND.

44. DEFEAZANCE INDORSED ON WARRANT OF ATTORNEY.

herewith, and made between the within-named [*grantor*], of the first part (*d*); the within-named [*grantor*], of the second part; and [*trustee*], of ——, in the county of ——, of the third part, for securing an annuity of £——, which (*e*) hath been granted or secured by the said [*grantor*] unto the said [*grantee*] (*g*), his executors, administrators, and assigns, for the term of ninety-nine years, if the said [*grantor*] should so long live; and the consideration (*h*) advanced and given for the purchase of the said annuity, was the sum of £——, paid to the said [*grantor*] by the said [*grantee*], in notes of

ninety-nine years, determinable on grantor's death.

SURETY.

(*d*) "the within-named [*surety*], of the second part;" &c.

BY COVENANT.

(*e*) "is thereby covenanted to be paid by the said [*grantor*], his (*or* [*grantor*] and [*surety*], their) heirs, executors, or administrators, to the said [*grantee*], his executors, administrators, and assigns, for the term" &c.

Husband should assign or underlease his wife's term for years.

As a wife, surviving her husband, is not subject to a distress for an annuity charged by him on her term for years, he should assign the term, *ut ante*, pp. 270, 288; or make an underlease, *ut ante*, p. 370, upon trusts for securing the annuity. *Vide ante*, p. 36.

(*g*) The form of the defeazance must be adapted to the circumstances of the case, and should follow the proviso in the deed or bond.

CONSIDERATION A CONVEYANCE.

(*h*) If the annuity be granted in consideration of an absolute conveyance of an estate, say,

"for the purchase of the said annuity, is a conveyance and surrender, made or to be made by the said [*grantee*] to the said [*grantor*], his heirs and assigns, of certain freehold and copyhold messuages, lands, and hereditaments, of him the said [*grantee*], situate in the parish of ——, or elsewhere, in the county of ——. AND the said annuity" &c.

In which case a memorial in Chancery is not requisite.

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defeazance is written immediately under the warrant of attorney; in which case, say,

"the above-written warrant of attorney is" &c.

DEFEAZANCE INCORPORATED WITH WARRANT.

And sometimes it is incorporated with the warrant of attorney, and brought in after the general warrant, thus:

"THIS warrant of attorney is given" &c.

in which case say, in the other instances,

"this warrant of attorney"

and then both the grantor and grantee should execute it.

the Governor and Company of the Bank of England, payable to bearer on demand], immediately before the execution of the said indenture. (*i*) And the said annuity is payable, and to be paid by the said [*grantor*], his heirs, executors, or administrators, unto the said [*grantee*], his executors, administrators, or assigns, from the date of the said indenture, for and during the said term of ninety-nine years, if the said [*grantor*] should so long live, at or in the common dining-hall of Lincoln's Inn, and either before or after the said —— day of —— next, then such part of the said annuity as shall be in proportion to the time, or number of days which, inclusive of the day of the decease of the said [*grantor*], shall have elapsed prior to his decease, and after the day of payment next and immediately preceding that event, or, as the case shall require, next after the day of the date of the said indenture, to be paid by the heirs, executors, or administrators of the said [*grantor*], immediately after the decease of the said [*grantor*], and demand made thereof. And *it is hereby declared and agreed*, that no execution or executions shall be issued or taken out upon the said judgment, unless or until the whole or a part of some quarterly payment of the said annuity shall be in arrear by the space of twenty-eight days: And also that in case the said annuity should at any time be in arrear by the space of twenty-eight days (*k*), then and

44. DEFEAZANCE INDORSED ON WARRANT OF ATTORNEY.

Declaration that no execution shall issue, until annuity be in arrear.

Power to sue out execution for the arrears.

(*i*) If there be a surety, add,

SURETY.

"And the said [*surety*] joined in a covenant contained in the said indenture, and also in* the within (*or* above) written (*or* this) warrant of attorney, at the instance and request, and as the surety for the said [*grantor*], for the due payment of the said annuity. And the said annuity" &c., *ut supra*.

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* "the said bond, and in,"

BOND.

(*k*) If it be the agreement, omit the above clause, and insert the following, beginning with the word "then;" or retain both, and after the words, "or any part thereof," *supra*, p. 454, insert the following, thus,

"or if upon any such default in payment as aforesaid, the said [*grantee*], his executors, administrators, or assigns, should prefer so doing,"

Power to sue execution for the whole debt confessed;

"then execution shall or may be sued for the whole of the said sum of [*double the consideration-money*], and the sum to

44. DEFEAZANCE INDORSED ON WARRANT OF ATTORNEY.

in such case, and so often, from time to time, as the same shall happen, it shall and may be lawful for the said [*grantee*], his executors, administrators, or assigns, to sue out such execution or executions upon or by virtue of the said judgment, as he or they shall think fit or be advised, for the recovery of the arrears of the said annuity of £——, and all costs, charges, damages, and expenses which he the said [*grantee*], his executors, administrators, or assigns, or any of them, shall bear, pay, sustain, or be put unto, for or by reason or means of the non-payment of the same annuity, or any part thereof. AND ALSO that it shall not be necessary for the said [*grantee*], his executors, or administrators, to issue any writ or writs of *scire facias*, or do any other act or acts for reviving the said judgment, or for keeping the same on foot, although no proceeding or proceedings shall have been taken or had thereon for the space of one

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and after paying arrears, &c. surplus to be held,

in trust to be invested in three per cents.

be so levied shall be applied in payment of the arrears of the said annuity, and the costs, charges, and expenses of and attending the levying the same; *And* the surplus shall be held IN TRUST, that the said [*grantee*], his executors, administrators, or assigns, shall invest the same surplus in the purchase of three per centum Consolidated Bank Annuities, in his or their name or names, and stand and be possessed of the same Bank Annuities, and the dividends, interest, and income thereof, IN TRUST to answer and pay the said annuity of £——, when and as the same shall become due; *And* subject thereto, shall stand and be possessed of the same three per centum Consolidated Bank Annuities, and the dividends, interest, and income thereof, IN TRUST for the said [*grantor*], his executors, administrators, and assigns"*.

in trust to answer future payments; the residue to be in trust for grantor.

Agreement to dispense with *scire facias*.

[J. In the case of *Morris* v. *Jones*, 3 Dowl. & Ryl. 263, 603; 2 B. & Cr. 243, it was contended that an agreement to this effect was nugatory; but the Court observed, "If a party chooses to bargain that execution shall issue on an old judgment without reviver, we cannot say that such a bargain is so unlawful as to justify us in setting aside the *elegit*." J.] [*Vide infra*, Vol. 5, p. 62.]

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* If a demand is, by the terms of the defeazance, made requisite previously to the issuing of an execution, (which ought always to be avoided, if possible), it must be distinctly made, and a proposal to the defendant to settle amicably does not amount to such a demand. *Nicholl* v. *Bromley*, 5 J. B. Moore, 397.

year immediately preceding the issuing of such execution. (*l*) AND ALSO, that after the determination of the said term of ninety-nine years, and full payment to the said [*grantee*], his executors, administrators, or assigns, of the said annuity, and the proportional part thereof, and all arrears thereof, up to the determination of the said term of ninety-nine years, and of all such costs, charges, damages, and expenses as aforesaid, he the said [*grantee*], his executors, administrators, or assigns, will or shall, on the request, and at the costs and charges of the said [*grantor*], his heirs, executors, administrators, or assigns (*m*), acknowledge satisfaction on the said judgment, upon the record thereof, in due form of law; and do any further or other act, matter, or thing which may be reasonably required for releasing and extinguishing all right and remedy under the said judgment, and all executions thereupon: *So* as for doing thereof the said [*grantee*], his executors, administrators, or assigns, shall not be compelled or compellable to travel from the place or places of his or their then residence or abode (*n*). AND ALSO, that in case the said [*grantor*] (*o*) or his assigns should at any

44. DEFEAZANCE INDORSED ON WARRANT OF ATTORNEY.

After end of term and full payment, satisfaction to be acknowledged.

(*l*) This provision, that it shall not be necessary to revive the judgment, appears to be unnecessary in the defeazance. Indeed it seems unnecessary in any of the securities, since it has been determined that a warrant of attorney to confess judgment, whether on bond or not, is not within the statute of 8 & 9 W. 3, c. 11, s. 8, which requires suggestions of breaches, and the *scire facias*. See 2 Tidd's Prac. 1142, 7th Ed.; 2 Archb. Prac. 12, (p. 683, 7th Ed.)

Proviso dispensing with necessity to revive judgment seems unnecessary.

[J. The author has here fallen into the error of supposing that the necessity of reviving a judgment by *scire facias* arises from the statute of William the Third, which is not the case. The stat. Westminster, 13 Ed. 1, c. 45, declared that the plaintiff should have a writ of execution "forthwith," if levied "within the year," and enabled him to have execution *after* that period by suing out a writ of *scire facias;* and this writ is still necessary in every case, after the lapse of a year, unless dispensed with by agreement. The clause therefore should be inserted. J.]

As to the necessity of a *scire facias* to revive judgments to secure annuities.

(*m*) "or of the said [*surety*], his heirs, executors, administrators, or assigns."

SURETY.

(*n*) If the annuity be granted in consideration of an absolute conveyance of an estate, the defeazance will terminate here.

CONSIDERATION A CONVEYANCE.

For the form of the bond, *vide ante*, 184; and for the grant, &c., *ante*, p. 338.

(*o*) "or the said [*surety*], his heirs, executors, administrators, or assigns, any or either of them, should" &c. *ut supra.*

SURETY.

If there be a surety or sureties, the form should be varied in other

44. DEFEASANCE INDORSED ON WARRANT OF ATTORNEY.

time after the expiration of three years, to be computed from the day of the date of the within (*or* above) written (*or* this) warrant of attorney, be desirous of repurchasing the said annuity of £——, and should give to the said [*grantee*], his executors, administrators, or assigns, or leave at his or their usual place of residence or abode, three calendar months' notice in writing of such his or their desire; and upon the expiration of the said notice, or at any time afterwards, and upon three calendar months' such notice as aforesaid, should pay unto the said [*grantee*], his executors, administrators, or assigns, the sum of £——, of lawful British money; and also all and every sums and sum of money which shall be then due and owing to the said [*grantee*], his executors, administrators, or assigns, for or on account of the said annuity, and also a proportional part of the same annuity, up to and inclusive of the day of paying the same; and all sums of money, if any, which shall be then due, for or on account of any costs, charges, or expenses occasioned by the non-payment of the said annuity, *Then* the said [*grantee*], his executors or administrators, shall, at the costs and charges of the said [*grantor*], deliver up the above-written warrant of attorney (if not filed) to be cancelled, or acknowledge satisfaction on the judgment (or judgments) if any should be entered up by virtue of the same warrant of attorney (*p*). As WITNESS our hands, the day and year within written. (*To be signed by the grantee and grantor*).

WITNESS.

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respects according to the agreement. See, as to one surety, *ante*, p. 180; two sureties, pp. 189, 234.

No stamp on defeazance.

(*p*) A defeazance upon a warrant of attorney does not require an additional stamp. *Cawthorn* v. *Holben*, 1 N. R. 279.

45. AFFIDAVIT *of the Time of the* EXECUTION *of a Warrant of Attorney to confess Judgment, previously to its being filed, in pursuance of the* 3 *Geo.* 4, *c.* 39, *s.* 1, *and* 1 & 2 *Vict. c.* 110, *s.* 60. 45. AFFIDAVIT OF EXECUTION OF WARRANT OF ATTORNEY.

IN THE QUEEN'S BENCH, (*or* COMMON PLEAS, *or* EXCHEQUER OF PLEAS.)

[*Witness*], of &c., maketh oath and saith, that he was present at the time of the signing and sealing of the warrant of attorney (*a*) hereunto annexed: AND that [*grantor*], of &c., therein mentioned, did, on the —— day of ——, the day of the date hereof, duly sign, seal, and as his act and deed deliver the said warrant of attorney, in the presence of this deponent: AND that the name [*grantor*], set and subscribed to the said warrant of attorney, is of the proper handwriting of the said [*grantor*]: AND that the

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(*a*) If the original is not intended to be filed until it is requisite to be done, under the rule of Court, M. T. 42 Geo. 3, for the purpose of signing judgment*; add, COPY TO BE FILED.

"a true copy whereof, and of the attestation whereof, and the defeazance and indorsements thereon, are hereunto annexed: AND that" &c.

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* [J. A judgment may be as effectually entered up on a warrant of attorney at any time, whether there be or be not a bond; so that in such case a bond seems to be an unnecessary expense, especially if the deed contains a covenant for payment of the annuity. When there is no warrant of attorney, a bond is much to be preferred to a covenant as a security for an annuity; because it enables the annuitant to obtain judgment for the penalty in a single action, and take out execution from time to time on the arrears; whereas under a covenant the annuitant is obliged to bring successive actions for the arrears as they accrue. Nor is this all, for if the annuity debtor dies, the annuitant would not be entitled, as against simple contract creditors, to have the assets reserved to answer the future payments of the annuity. Aliter, if it had been secured by bond, in which case it would have been regarded for such purpose as an actual subsisting debt. J.] Judgment may be entered up either on a bond or without it.

45. AFFIDAVIT OF EXECUTION OF WARRANT OF ATTORNEY.

name [*witness*], set and subscribed as the witness thereto, is of the proper handwriting of this deponent.

[*witness.*]

Jurat of affidavit when sworn in Court.

SWORN in court, (*or if the court be not mentioned at the top of the affidavit,* "in the Court of Queen's Bench, or Common Pleas, or Exchequer"), at Westminster Hall, the —— day of ——, 18—.

By the Court.

When sworn before a judge or baron.

When the affidavit is sworn before a judge or a baron, the *jurat* is as follows:

SWORN at my chambers, in Serjeants' Inn, Chancery Lane, (*or* "at my house, in ——," *or wherever else the affidavit may be sworn*), the —— day of ——, 18—, before me.

[*Judge*].

When sworn before a commissioner.

When sworn before a commissioner, authorized to take affidavits by the statute 29 Car. 2, c. 5, it is thus:

SWORN (*b*) at ——, in the county of ——, the —— day of ——, 18—, before me ——, a commissioner, (*or, if the court be not mentioned at the top of the affidavit,* "a commissioner for taking affidavits in the Court of ——.")

[If sworn before a commissioner authorized to take affidavits in Scotland or Ireland by stat. 3 & 4 Will. 4, c. 42, s. 42, it is this:

SWORN at ——, in the kingdom of Scotland (*or* Ireland), the —— day of ——, 18—, before me ——, a commissioner for taking affidavits in the Court of —— in England.

(*b*) The names of several deponents must be inserted in the *jurat* of the affidavit. 2 Chit. Rep. 19; 2 Chit. Arch. Pract. Book iv, Part 1, Ch. 36. Reg. T. T. 1 Geo. 4, Exchcq.; 6 Bingham, 236.

46. WARRANT OF ATTORNEY *to confess* JUDGMENT *by a* SURETY, *for payment of an* ANNUITY *granted* [*by a Clergyman*] (*a*) *to Trustees for an Insurance Company, with a* DEFEAZANCE *by reference to the Defeazance contained in the Grant, and herein recited.*

46. SEPARATE WARRANT OF ATTORNEY BY A SURETY, WITH DEFEAZANCE.

TO (*attornies*), attornies of her Majesty's Court of Queen's Bench, at Westminster, jointly and severally, or to any other attorney of the same court.

WHEREAS the Reverend [*grantor*], clerk rector, of ——, in the county of ——, hath contracted with [*trustees*], of &c., (as trustees for the society or partnership called "The Globe Insurance Company"), for the sale to them, at or for the price of £——, of one annuity of £——, for the term of ninety-nine years, if he the said [*grantor*] should so long live, to be secured amongst other things by the warrant of attorney of the undersigned [*surety*], of &c., (who at the request of the said [*grantor*] hath become his surety for the payment of the same annuity), and a judgment to be forthwith entered up in pursuance thereof in her Majesty's Court of Queen's Bench at Westminster, in an action against the said [*surety*], at the suit of the said [*trustees*], or the survivors or survivor of them, or the executors or administrators of the survivor of them, for the sum of [*double the consideration-money*], for money borrowed, and costs of suit. AND WHEREAS the said [*grantor*], in pursuance of the said agreement, and in consideration of the sum of £—— of lawful British money, to him in hand paid by the said [*trustees*], at the time of the sealing and delivery of the said indenture, and of these presents, (which sum of £—— was the proper money of the said society or partnership, and

Recital of contract for the purchase of an annuity by trustees for an insurance company.

And to be secured amongst other things by surety's warrant of attorney to confess judgment.

Recital of grant of annuity to trustees for insurance company.

(*a*) [As to securities by clergymen, *vide infra*, Vol. 5, p. 212. The only way of making a benefice available as a security is by means of a judgment obtained against the incumbent in the ordinary form, without any expression of intent to obtain a sequestration. There is therefore no peculiarity in any of the securities given by a clergyman.]

46. SEPARATE WARRANT OF ATTORNEY BY A SURETY, WITH DEFEAZANCE.

was so paid by the said [*trustees*], as aforesaid, on the behalf of the said society or partnership), *Hath*, by indenture, bearing even date herewith, given, granted, sold, and confirmed unto the said [*trustees*], their executors, administrators, and assigns, *One* annuity or clear yearly sum of £—— of lawful British money, to be paid and payable for and during the term of ninety-nine years, to commence from the day next before the day of the date of the said indenture, and of these presents, and thenceforth next ensuing and fully to be complete and ended, *if* the said [*grantor*] should so long live, at or in the common dining-hall of Lincoln's Inn, in the county of Middlesex, by equal quarterly payments; that is to say, the —— day of ——, &c., in every year, without any deduction or abatement whatsoever; the first quarterly payment of the said annuity to be made on the —— day of —— next ensuing the day of the date of the said indenture, and of these presents, if the said [*grantor*] should then be living; and if the said [*grantor*] should depart this life during the said term of ninety-nine years, and between or in the interval of any two of the said quarterly days of payment, and either before or after the said —— day of —— next, then such part of the said annuity as should be in proportion to the time or number of days which, inclusive of the day of the decease of the said [*grantor*], should have elapsed prior to his decease, and after the day of payment next and immediately preceding that event, or as the case should require, next after the day of the date of the said indenture, and of these presents, to be paid to the said [*grantee*], his executors, administrators, or assigns, immediately after the decease of the said [*grantor*], and demand made thereof. AND by the said indenture it is declared, that the judgment intended to be entered up in pursuance of these presents, is intended and agreed to be a further security to the said [*trustees*], their executors, administrators, and assigns, for the said annuity of £——; *And* that no execution or executions shall be issued or taken out upon the said judgment, unless and until the same annuity, or some part thereof, shall be in arrear by the space of forty-five days; *and* the said [*trustees*], their executors, administrators, and assigns, are thereby authorized, when and so often as the same annuity, or any part thereof, shall be so in arrear for forty-five days, to sue out such execution or executions upon the said judgment, for the re-

With proportional part.

Recital of defeazance to surety's warrant of attorney.

46. SEPARATE WARRANT OF ATTORNEY BY A SURETY, WITH DEFEAZANCE.

covery of the arrears of the said annuity, and all costs, charges, and expenses (if any) which they shall sustain, or be put unto, by reason of the non-payment thereof, as they shall think fit: *And* by the said indenture the said [*trustees*] have covenanted for and on the behalf of the said society or partnership, with the said [*grantor*], that if he the said [*grantor*] should be desirous of repurchasing the said annuity, at any time hereafter, (*recite the power to repurchase*). NOW THEREFORE THESE ARE, in pursuance of the above-mentioned agreement, and for the further securing the said annuity of £——, to desire and authorize you, the attornies above named, or any one of you, or any other attorney of the Court of Queen's Bench aforesaid, to appear for the said [*surety*], forthwith, and then and there receive a declaration for the said [*surety*], in an action of debt for [*double the consideration-money*] for money borrowed, at the suit of the said [*trustees*], or the survivors or survivor of them, or the executors or administrators of the survivor of them; and thereupon to confess the said action, or else to suffer judgment by not informed, or otherwise, to pass against the said [*surety*] in the said action, and to be thereupon forthwith entered up against him of record of the same Court for the sum of [*double the consideration-money*], and costs of suit. AND the said [*surety*] doth hereby further authorize and empower you, the said attornies, or any one of you, after the said judgment shall be entered up as aforesaid, for him the said [*surety*], in his name, and his act and deed, to sign, seal, and execute, a good and sufficient release in the law to the said [*trustees*], or the survivors or survivor of them, their or his heirs, executors, and administrators, of all and all manner of error and errors, writ and writs of error and errors, and all benefit and advantages thereof, and all misprisions of error and errors, defects and imperfections whatsoever, had, made, committed, done, or suffered in, about, touching, or concerning the aforesaid judgment, or in, about, touching, or concerning any writ, warrant, process, declaration, plea, entry, or other proceeding whatsoever, of or in anywise concerning the same. AND what you the said attornies, or any one of you, shall do, or cause to be done in the premises, this shall be to you a sufficient warrant and authority. AND *it is hereby declared,* that the judgment so to be entered up is to be a further security for the payment of the said annuity of £——, in such manner as in the said

Recital of power to repurchase.

Warrant of attorney by a surety to confess judgment;

and release errors.

General warrant.

Defeazance by reference to recital hereinbefore contained.

46. SEPARATE WARRANT OF ATTORNEY BY A SURETY, WITH DEFEAZANCE.

indenture is expressed. IN WITNESS whereof the said [*surety*] hath hereunto set his hand and seal (*b*), and the said [*trustees*] have hereunto (*c*) set their hand, the —— day of ——, in the —— year of the reign, &c.

SIGNED, SEALED, &c. (*ut ante*, p. 451). [*surety*] L. S.
[*trustees.*]

Affidavit.

(*b*) See form of the affidavit of execution, *ante*, p. 457.

Stamp.

Where an instrument has an insufficient stamp, it may be properly stamped at any time, on paying the penalty.

(*c*) As to the stamp, *vide ante*, pp. 451, 456. But where an instrument has an insufficient stamp, it may at any time be made available by affixing a proper stamp and paying the penalty. 1 Tidd's Prac. 565, 7th Ed. Therefore, where a rule *nisi* was obtained to set aside a judgment on a warrant of attorney, on the ground of an insufficient stamp, the Court of Common Pleas discharged the rule, the instrument having been properly stamped since the motion. *Burton* v. *Kirkby*, 7 Taunt. 174. 2 Marsh. 480.

An old deed stamped with the existing duty is evidence.

[J. A deed which is produced stamped with the stamp required by 48 Geo. 3, c. 149, is evidence, although it has not affixed the deed stamp, of less value, required by the statutes in force at the time when such deed was executed. *Doe* v. *Whittington*, 4 Taunt. 20. J.]

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47. WARRANT OF ATTORNEY *to confess Judgment in any of the* COLONIES.

47. WARRANT TO CONFESS JUDGMENT IN THE COLONIES.

(MONTSERRAT).

TO [*attorney*], Esquire, or to any other attorney of the Court of Common Pleas, (*or* Queen's Bench), or of any other Court of record held for the said island.

THESE are to desire and authorize you, or any one of you, to appear for me [*grantor*], of &c., at the next Court of Common Pleas (*or* Queen's Bench), or any other Court of Record, to be held for the said island, or any other subsequent Court; and then and there to receive a declaration &c. (*insert the remainder of the form, ante*, p. 449). AND (*a*)

Power to ac-

(*a*) *Vide ante*, p. 397, (*b*). It is prudent to indorse the defeazance, although it does not appear that there is any rule of any of the colonial courts which makes it requisite.

to the intent that these presents may be duly acknowledged, recorded, and registered, and take effect according to the law, usage, and custom of the said island of (Montserrat), the said [*grantor*] *doth make*, ordain, constitute, and appoint, &c. (*ut anie*, pp. 397, 398, *ending*), according to the true intent and meaning of the same. In witness, &c. *ut ante*, p. 450.

47. WARRANT TO CONFESS JUDGMENT IN THE COLONIES.

knowledge colonial warrant of attorney.

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48. Warrant of Attorney *to acknowledge* Satisfaction *on a* Judgment *for securing an Annuity on a* Repurchase, *or* Determination *of the Annuity* (*a*).

48. WARRANT TO ACKNOWLEDGE SATISFACTION ON JUDGMENT ON REPURCHASE, &c.

TO [*Attornies*], attornies of the Court of Queen's Bench (*or* Common Pleas) at Westminster, jointly and severally, or to any other attorney of the same Court.

WHEREAS I [*grantee*], of &c., heretofore, to wit, in or about the term of —— last past, (*or* in the —— year of the reign of his late (*or* her present) Majesty ——), obtained judgment in her Majesty's Court of Queen's Bench (*or* Common Pleas) at Westminster, against [*grantor*], of &c., for £——, and £—— costs, as by the record thereof may appear: And whereas I the said [*grantee*] have received satisfaction for the same: These are therefore to desire and authorize you the attornies above named, or any one of you, or any other attorney of the same Court, to acknowledge and enter satisfaction upon the record of the same judgment; and for your so doing, this shall be your sufficient warrant and discharge in that behalf. In witness whereof I have hereunto set my hand and seal, the —— day of ——, in the year of our Lord, —— (*b*).

Recital of judgment;

of satisfaction.

Authority.

Testimonium.

[*grantee*] L. S.

Sealed and delivered, in the presence of [*Witness*], of &c.

(*a*) When the judgment is satisfied, the grantor has a right to call on the grantee for a warrant to acknowledge satisfaction. 2 Tidd's Practice, 1062, 7th Ed. But it must be done at the grantor's expense.

(*b*) The stamp is *one pound*. 55 Geo. 3, c. 184. Sched. part II.

Stamp.

49. WARRANT TO ENTER SATISFACTION IN INROLMENT OFFICE ON REPURCHASE, &c.

49. WARRANT *to enter* SATISFACTION *in the* INROLMENT OFFICE, *by the Grantee or his Executors or Administrators, on a Repurchase, or on the Determination of an Annuity* (*a*).

TO the proper officer of the Inrolment Office of the High Court of Chancery.

Authority to enter satisfaction in inrolment office.

I (*b*), [*grantee*], of &c., do hereby authorize you to enter satisfaction in your books to an annuity of £——, granted to (*c*) me by an indenture, bearing date the —— day of ——, and made between [*grantor*], of &c., of the first part; me the said [*grantee*], of &c., of the second part; and [*trustee*]

Instructions as to the inrolment of satisfaction piece.

(*a*) The Annuity Act does not authorize the entry of a discharge in the books. It is, however, generally done, as it proves, in case a search should be made, that the grantor is freed from the annuity. The entry of a satisfaction piece should never be omitted, when the grantor has several estates; because the memorial does not disclose the property on which the annuities are charged. The satisfaction piece should be written on a small piece of unstamped parchment, and should be left in the Inrolment Office, between the hours of ten and two. The person who takes it sees it entered, and signs a memorandum. The fee at the office is *five shillings*.

No stamp requisite.

BY EXECUTORS OR ADMINISTRATORS.

(*b*) If by the executors or administrators, say,

"WE [*E. F.*] and [*G. H.*], executors (*or* administrators) of [*grantee*], late of &c. deceased, do" &c.

(*c*) The said [*grantee*], by" &c.

In which case the satisfaction piece should be signed by the executors or administrators, and under their signatures; or on a similar piece of parchment to be annexed, say,

Will.

"10*th May*, 18—, [*grantee*], of &c., by his last will and testament, appointed [*executors*], of &c., executors of his will.

Probate.

"23*rd October*, 18—. The said will was proved in the Prerogative Court of the Archbishop of Canterbury, and probate granted to the said [*executors*]; (power being reserved to make the like grant to the said [*executor*], the other executor, when he should apply for the same)."

of &c., of the third part: And for so doing this shall be to you a sufficient authority. Dated &c.

49. Warrant to enter satisfaction in Inrolment Office on repurchase, &c.

Witness, [*grantee*].
[*witness*], of &c.

Satisfaction to be entered in Middlesex or Yorkshire.

If the judgment has been registered in Middlesex or Yorkshire (*vide ante*, p. 359), a certificate of satisfaction should be left at the Registry. See the Form, tit. Registration.

Then the person who prepares the satisfaction piece should put the registrars' names, thus,

Geo. Gostling,
Nath. Gostling,
R. C. Creswell,
} Deputy Registrars.

If it be an administration, say,

Administration.

23*rd October*, 18—. Administration of the goods and chattels of [*grantee*], late of &c., was granted by the Prerogative Court of the Archbishop of Canterbury, to [*administrators*], of &c.

Then put the registrars' names, *ut supra*.

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50. WARRANT *to vacate a conditional Surrender of Copyholds for securing an Annuity, which has been repurchased or has determined, where the Grantee cannot conveniently attend in Court, or before the Lord or Steward.*

50. Warrant to vacate copyhold surrender on repurchase, &c.

TO the Steward of the Manor of ——, in the county of ——.

Acknowledgment and warrant to vacate surrender.

I, [*grantee*], of &c., hereby acknowledge to have received satisfaction on a conditional surrender made by [*grantor*], of certain copyhold premises, held of the said manor, to [*trustee*], of &c., and taken out of Court on the —— day of ——; And *therefore* I request and authorize you to vacate such surrender accordingly. Dated the —— day of ——.

Witness, [*grantee*].
[*witness*], of &c.

On unstamped parchment.

This should be written on parchment; a stamp does not appear to be necessary.

51. COPYHOLD SATISFACTION PIECE ON REPURCHASE, &c.

51. SATISFACTION PIECE, *taken by the Lord or Steward, and indorsed on a conditional Surrender of Copyholds for securing an Annuity.*

By indorsement on the surrender.

BE IT REMEMBERED, that out of Court, on the —— day of ——, the within-named [*grantee*] came before me [ ] lord (*or* steward) of the manor of ——, and acknowledged to have received satisfaction on the within-written surrender: *And* requested that the said surrender should be vacated accordingly (*a*).

TAKEN the day and year above written, by me, } [*grantee*].

—— [*lord* or *steward*].

The satisfaction piece should be presented at the next court, and entered on the rolls.

MORTGAGES, &c.

(*a*) The above forms are equally adapted to vacate a conditional surrender for securing money which has been discharged. Indeed the greater part of the forms, and also the notes, but more especially the recitals, under the title Annuity, are equally applicable to mortgages, and other conveyancing transactions; which will be the means of considerably shortening the other titles.

APPOINTMENT.

PRELIMINARY REMARKS.

EXECUTION OF POWERS.

[A NOTICE of a few of the most important points that occur upon this extensive subject, is all that can be attempted here. It is scarcely necessary to refer the reader for full information upon every branch of the subject, to the last Edition of Sir Edward Sugden's Treatise on Powers. Some questions that are passed over here will find a more appropriate place under the title SETTLEMENT or WILL.]

Suspension and extinguishment of powers.

[As to leases under powers, *vide infra*, Vol. 4, p. 256. The classification of powers of appointment is touched upon *infra*, Vol. 5, p. 161, by way of introduction to a discussion as to the extinguishment and suspension of such powers. Since that volume was published, the case of *Jones* v. *Winwood* has been decided by the Vice-Chancellor, (9 Sim. 150), who has adopted the certificate and reasoning of the Judges of the Court of Exchequer in the same case, (3 Mee. & W. 653, *infra*, Vol. 5, p. 174). His Honor evidently considered that in so doing he was overruling the case of *Badham* v. *Mee*, (*infra*, Vol. 5, p. 173).]

Effect of bankruptcy, &c. on powers.

Jones v. *Winwood*.

APPOINTMENT BY A WIFE.

What power may be executed by a wife.

Appointments by married Women.]—A wife may, without her husband, execute a *naked authority*, whether given before or after coverture, and though no special words are used to dispense with the disability of coverture. Co. Litt. 112. a., 187. b.: *Bayley* v. *Warburton*, 2 Com. 494: *Burnet* v. *Mann*, 1 Ves. sen. 157. The rule is the same where both an *interest* and an authority pass to the wife, if the authority is *collateral* to, and does not flow from, the interest; because then the two are as unconnected as if they were vested in different persons. *Gibbons* v. *Moulton*, Finch, 346;

APPOINTMENT BY A WIFE.

Distinction as to powers, coupled with an interest.

Hargr. n. Co. Litt. 112. a. (6); 4 Vin. Abr. 59, pl. 13. But unless there be a dispensation with coverture, it seems that a power, coupled with an interest, cannot be exercised during coverture. 1 Pres. Abs. 340. It may be released or extinguished, 3 Atk. 703, by a fine or recovery; Pres. Watk. Conv. 252; or as to copyholds, by a customary surrender or recovery. "The construction of law on a power coupled with an interest is very different from a naked power over another person's estate, and that distinction has been taken in the cases of feme coverte." Per Lord Hardwicke, *Hearle* v. *Greenbank*, 3 Atk. 714; and see *Marquis of Antrim* v. *Duke of Buckingham*, 1 Ch. Cas. 18; 2 Freem. 168: *Cawking* v. *Parrett*, 2 Freem. 18; *Blithe's case*, 2 Freem. 91. And if a power be given to a single woman, to be executed by her "being sole," it cannot be executed by her during coverture. *Marquis of Antrim* v. *Duke of Buckingham*, 1 Ch. Ca. 17; 2 Freem. 168; 3 Salk. 276; 1 Eq. Ca. Abr. 343, pl. 3; 2 Com. 496; Pow. Pow. 31—43; Sug. Pow. 149, 2nd Edit. In cases of copyhold lands, the surrender, and of freehold lands the conveyance, should be to such uses as she, whether coverte or sole, and notwithstanding her coverture, shall appoint. 1 Pres. Abs. 339. [The distinction, however, between a power simply collateral, and a power coupled with an interest, though apparently sanctioned by the above-recited authorities, is not now recognized; and it is settled that a power may be exercised by a married woman, and so as to take effect out of her own estate, and this without the concurrence of her husband, and whether the appointment operates by way of executory devise, by way of use under the statute, or as a nomination of the person to be admitted to a copyhold estate: *Harris* v. *Graham*, 1 Roll. Ab. 329, pl. 10; 1 Co. Litt. 112. a.: *Daniel* v. *Ubley*, or *Upton*, Letch. 9, 39, 134; Noy, 80; 1 Jon. 137: *Gibbons* v. *Moulton*, Finch, 346: *Bayley* v. *Warburton*, 2 Com. 494: *Tomlinson* v. *Dighton*, 1 P. Wms. 149: *Lady Travell's case*, (cited in *Hearle* v. *Greenbank*, 3 Atk. 711; and in *Peacock* v. *Monk*, 2 Ves. sen. 191 (*a*)); 3 Vin. Abr. 427,

(*a*) [In *Peacock* v. *Monk* it was decided, that a woman could not by mere agreement with her intended husband, reserve to herself a power of disposing of her real estate; the power must be properly created by a conveyance. However, an appointment under such an agreement is clearly good in equity, whether made in favour of children or of volunteers. *Wright* v. *Englefield*, Ambl. 468: *Wright* v. *Cadogan*, 2 Eden, 239; 1 Toml. Br. P. C. 486: *Doe* d. *Hodsden* v. *Staple*, 2 T. R. 695: *Rippon* v. *Dawding*, Ambl. 565: *Bramhall* v. *Hall*, Ambl. 2 Ed. 220; Ambl. 467: *Dillon* v. *Grace*, 2 Sch. & Lef. 456. So, though in the cases of *Harvey* v. *Harvey*, 1 P. Wms. 125, and *Burton* v. *Pierpoint*, it was thought that a trust could not be raised

APPOINTMENT BY A WIFE.

pl. 8: *Countess of Sutherland* v. *Northmore*, 1 Dick. 56, S. C.: *Roscommon* v. *Fowke*, 6 Br. P. C. 158: *Burnett* v. *Mann*, 1 Ves. sen. 156: *Driver* d. *Berry* v. *Thompson*, 4 Taunt. 294: *Boddington* v. *Abernethy*, 8 Dowl. & Ry. 626; 5 B. & Cr. 776; *ante*, Vol. 1, p. 597: *Downes* v. *Timperon*, 4 Russ. 334: *Curteis* v. *Kenrick*, 3 Mee. & W. 461; 9 Sim. 443.]

Power to be exercised during coverture.

[Where, by a marriage settlement, a term was limited in trust on the death of the survivor of the intended husband and wife, to raise a sum of money, and pay the same to such persons as the intended wife, at any time or times thereafter during her coverture, and notwithstanding the same, by any deed or writing should appoint, it was held that the power could not be exercised by the wife, after the death of the husband contemplated by the settlement. *Horseman* v. *Abbey*, 1 Jac. & W. 381.]

A wife may convey lands in performance of a condition.

As a feme coverte may, without her husband, convey lands in execution of a mere power or authority, so may she with equal effect, in performance of a *condition*, where land is vested in her on condition to convey to others. W. Jones, 137, 138. The reason why, in these instances, the wife may convey without her husband, seems to be, that he can receive no prejudice from her acts, but a great one might arise to others, if his concurrence should be essential. Yet if a legal estate of freehold be vested in a married woman, in trust for another, the better opinion, sanctioned by uniform practice, is, that no effectual conveyance can be made, unless she and her husband join in an acknowledged conveyance of the estate. 1 Pres. Abs. 337. This was the opinion of Jones, in the case of *Daniel* v. *Upley*. But the judges, Whitlock and Dodridge, dissented from Jones, and held, that the husband's joining was not any more requisite than in the other cases. W. Jones, 137. Jones's opinion, however, seems to be most conformable to the strictly legal doctrine; and his thus distinguishing a *trust* from a *power* and a *condition* may be accounted for. Trusts are properly the subjects of consideration for the courts of equity only; and though in them the legal estate is made subservient to the trust, yet the courts of law take notice of trusts for very few purposes. Butl. Fearne Rem. 35; Preston on

Conveyance of estate vested in wife as trustee.

Trusts belong to Courts of equity only.

for the separate use of a married woman without the intervention of a trustee, yet it is now settled such a trust may arise, although the legal proprietorship is not vested in trustees, and that whether the property be realty or personalty. *Bennett* v. *Davis*, 2 P. Wms. 316: *Rolfe* v. *Budder*, Bunb. 187: *Dixon* v. *Olmius*, 2 Cox, 414: *Parker* v. *Brooke*, 9 Ves. 583: *Pritchard* v. *Ames*, Turn. & R. 222: *Major* v. *Lansley*, 2 Russ. & M. 355: *Anderson* v. *Anderson*, 2 Myl. & Keen, 427: *Stead* v. *Nelson*, 2 Beav. 245: *Newlands* v. *Holmes*, 4 Jurist, 282.]

APPOINTMENT BY A WIFE.

Shelley's case, 58; 1 Prest. Est. 311. Nor will it be easy to find an authority for departing from any rule about the effect of legal conveyances, merely in respect of there being a performance of trusts. Harg. Co. Litt. 112. a., (6). Another reason for this distinction may be drawn from the consideration, that if a married woman were allowed to convey a trust estate, without her husband's concurrence, she might convey it before the several objects of the trusts were satisfied, for which he might jointly with her be responsible to the *cestui que trust:* a reason which does not apply to the mere execution of a power, or performance of a condition. 1 Fonb. Eq. 92, 5th Edit.

Dower of the wife of a trustee or mortgagee.

But as connected with the above doctrine, it may be observed, that although the wife of a trustee in fee, or of a mortgagee in fee, of a forfeited mortgage, is at law entitled to dower, Sugd. Gilb. Uses, 369; Noy's Ten. 16, yet an objection on that account is never made by a purchaser; because, if the wife of a trustee or mortgagee were to be so ill advised as to prosecute her legal claim, equity would at this day restrain her from proceeding by injunction, and would undoubtedly compel her to pay all the costs. Sugd. Vend. 317, 6th Ed. For the legal estate vested in a trustee in fee, or in a mortgagee in fee of a forfeited mortgage, is in equity protected against his judgments and other incumbrances; *Finch* v. *Earl of Winchelsea,* 1 P. Wms. 278; 1 Madd. Ch. 2nd Ed. 466: and against his bankruptcy; *Bennet* v. *Davis,* 2 P. Wms. 318; 3 P. Wms. 187 (A): *Bennet* v. *Pope,* 2 Freem. 71; and free-bench of his wife; *Hinton* v. *Hinton,* 2 Ves. sen. 631; 1 Sand. Uses, 3rd Ed. 279; and from the tenancy by the curtesy of the husband of a female trustee, or mortgagee in fee. *Cashborn* v. *English,* 7 Vin. Abr. 156; 2 Eq. Ab. 728; 1 Atk. 603; 1 Cru. Dig. 2nd Ed. 523; Sug. Gilb. Uses, 18, n.

Appointment by infant.

Infant.]—[An infant may execute a power either at common law or by way of use, if it is not coupled with an interest. *Grange* v. *Tiving,* Orl. Bridg. 107: *Hearle* v. *Greenbank,* 3 Atk. 710: *Colton* v. *Hoskins,* 16 Vin. Abr. 486, pl. 3, n. And it seems that a power given by express words or necessary implication, to be exercised during infancy, will be good, notwithstanding it is coupled with an interest in the infant. See 1 Prest. Abst. 326; Orl. Bridg. 107; 3 Atk. 714.]

Mode of framing appointments.

Execution of Powers.]—[In every well-drawn deed of appointment, these three points should be embraced: 1st, the deed ex-

ecuting the power should be expressed to be in exercise of it; 2dly, of every other authority enabling the donee in that behalf; and, 3dly, it should be shewn in the body of the deed, that the formalities required to the execution of the power are complied with. The first clearly evinces the intention of the person executing the power, which is particularly necessary where he has an interest as well as a power, the second guards against any misrecital of the deed creating the power; and in some cases has reached powers understood to have been extinguished; and the third affords internal evidence of the ceremonies having been complied with; and moreover, the attestation indorsed on a deed or other instrument, executing a power, should always state precisely that the formalities were attended to. Sug. Pow. 193, 3rd Ed.]

EXECUTION OF POWERS.

[To the validity of an appointment at law (and, with some exceptions, in equity) it is requisite that the terms of the authority, however trivial or impertinent in themselves, should be strictly pursued, unless the power authorizes an appointment by will, and the will comes within the operation of the recent Statute of Wills. Thus, in a leading case, where a power was given to T. H., to be executed by any deed or instrument in writing, attested by three witnesses, and *inrolled* with the *consent* in writing of certain trustees, it was held that the power was not exercised by a deed duly inrolled in 1791, and executed by the donee, and all the trustees except R. T., who had given no consent otherwise than by a general power of attorney previously made by him to the donee, to consent to any deed he might think proper to execute, under which power the donee executed the deed for and in the name of R. T.; and that a subsequent deed duly executed in 1798, and assented to, but not inrolled until after the donee's death, did not by itself, or in connexion with the former deed, operate under the power. Lord *Ellenborough*, C. J., said—" The consent and approbation of R. T. (amongst others) was made necessary to the revocation of the old uses and declaration of the new uses by T. H. It was so made necessary for the purpose of creating an independent check and control in R. T. and the other trustees, over the disposition of his property by T. H. Indeed, the validity of the revocation and appointment executed under the authority of the power of attorney appeared to the counsel for the plaintiff so little maintainable, that it was, upon an intimation from the Court of what would probably be its opinion upon that head, at an early period of the argument abandoned; at least as to its being of itself a substantive and effectual deed of revocation and appointment. But the inrolment which

Power must be strictly followed.

Hawkins v. *Kemp*.

A trustee whose consent is requisite to an appointment cannot consent by anticipation.

EXECUTION OF POWERS.

Hawkins v. *Kemp.*

Power executed by two instruments taken together.

that deed of 1791 received, was afterwards endeavoured, in argument, to be transferred and handed over to the deed of 1798, in order to obviate the want of inrolment in the life of T. H., under which that deed laboured. And, in support of this attempt, *Lord Leicester's case,* 1 Vent. 278, was relied on. There Lord Leicester, having a power by writing indented, subscribed by his hand and sealed, to revoke uses covenanted by *writing,* sealed and subscribed by his hand, to levy a fine to other uses, which fine was afterwards levied ; and although neither instrument was of itself sufficient to revoke the old uses, Lord *Hale* held, that, conjointly, they would do it, observing, upon that occasion, *quæ non prosunt singula, juncta juvant.* But that authority will not assist the plaintiffs in this case, for there it was the intention of the Earl of Leicester that the covenant and fine should revoke the uses; but in this case *there is no intent that the two deeds conjointly should revoke the uses,* and that the inrolment of the first should be applied to or be in any way connected with, the second. On the contrary, the deed of 1798, in the body of it, takes notice of the inrolment as an act *to be done* in respect of the then executing deed, thereby not only adverting to the *necessity* of actual inrolment, but virtually disclaiming the benefit (if, indeed, in any shape such benefit could have been derived from it) of the inrolment of the former inefficacious deed of revocation and appointment of 1791."

" Before I proceed to consider the arguments on which the deed of 1798 was contended to be a good execution of the power, I will state what the terms of that power require : it being remembered that the only objection is, that this deed was not inrolled until after T. H.'s death. The terms required that the revocation should be by a deed or instrument in writing, executed in the presence of and attested by three credible witnesses, and inrolled in one of his Majesty's Courts of record at Westminster, and with the consent and approbation of T. H's wife, his father, father-in-law, the trustees of a term of 500 years in the settlement of 1770, and also all the trustees to support contingent remainders, being in all nine persons. Every one of these required circumstances is in itself perfectly arbitrary, and (except only as it is in fact required) unessential in point of effect to the legal validity of any instrument by which the old uses should be revoked or new uses declared. It is in itself immaterial whether the instrument in writing, purporting so to revoke and declare the uses, should be by deed; whether such deed should be executed in the presence of what, and how many witnesses; whether it should be afterwards attested by the wit-

nesses, and ultimately inrolled in any Court of record; and whether it should be sanctioned by the consent and approbation of the several trustees named for that purpose. It might (if it had so pleased the parties creating the power) have been done by any writing of the person so authorized, unsealed, unattested, uninrolled, and unsanctioned by any consent or approbation whatsoever. *If these circumstances be unessential and unimportant, except as they are required by the creators of the power, they can only be satisfied by a strictly literal and precise performance.* They are incapable of admitting any substitution, because these requisitions have no spirit in them which can be otherwise satisfied; incapable of receiving any equivalent, because they are in themselves of no value. And, indeed, in this case the inrolment has been considered on both sides as a thing necessary to be done at some time or another, and which, after *Digges' case,* 1 Rep. 174, could not be denied. And the question on this part of the case is only whether it can have any effect, as it was not done in T. H's lifetime. And this question depends upon what shall be a fair construction of the clause giving the power; in making which, the Court is to decide according to what they shall judge to be the intention of the parties; not restraining the power by a narrow and rigid construction, nor by a loose and extended interpretation, dispensing with the substance of what was meant to be performed. And, looking at the question in that light, we are of opinion that this power has not been well executed."

Power must be completely executed in the lifetime of all the parties.

"My brother Williams, who argued that it was well executed, contended that the deed of revocation was perfect without inrolment, that it was a mere ceremony, something collateral which might be done at any time, and that there was nothing *personal* in the inrolment; and in the course of his argument pointed our attention to some of the differences between conveyances at common law and by the Statute of Uses—citing, in support of the points he contended for, amongst other cases, the case of *Hall* and *Wingfield,* Hob. 195, which was the case of the inrolment of a recognizance; *Shelley's case,* 1 Rep. 99, where an execution on a common recovery, taken out after the death of the tenant in tail suffering the recovery, was holden to vest the uses in Richard Shelley, and to take the estate from the heir of Edward Shelley, to whom it had descended; and *Perryman's case,* 5 Rep. 84, where the custom of a manor being that every alienation of lands within it should be presented at some Court within a year, it is laid down that the presentment may be made after the death of the feoffor or feoffee,

EXECUTION OF POWERS.

Hawkins v. *Kemp.*

and reasoning from the analogy which he conceived to subsist between the case at bar and surrenders of copyholds, and of exchanges where the title may be perfected by entry after the death of either party. On the other side it was contended that the inrolment, according to the general doctrine of power, ought to have been in the life of T. H., that the mischief would be enormous of allowing an inrolment at any period, as no time is limited by the deed; that the relation contended for would operate to the destruction of a lawful estate vested in T. H.'s daughters, and to make good void acts of the parties, which cannot be; and in support of these positions, *Albany's case*, 1 Rep. 110: *Hyde's case*, 4 Rep. 70, b, and *Digges' case*, 1 Rep. 173: *Perry* v. *Bowas*, 1 Vent. 360; T. Jones, 196: the *Duke of Marlborough* v. *Godolphin*, 2 Ves. sen. 61, and other cases were cited."

"To some of the positions on which my brother Williams rested his argument we do not agree. There is a fallacy in laying it down that the deed of revocation was perfect without inrolment. For as the power of revocation depends entirely on those steps being pursued, which the persons creating the power have prescribed, the point is not whether a deed, which may be one of the things necessary to work a revocation, has all the circumstances belonging to it which the law requires to give validity to a deed as such; but the question is, whether it be perfect, as that particular instrument which is required for the purpose of effecting a revocation. A deed, quà deed, certainly requires no inrolment to give it validity, that is, not a thing which arises from, or is connected with, the nature of the instrument itself. But if an instrument, attended with all the circumstances necessary to the perfection of a deed, will not operate to effect a revocation, from the omission of certain other circumstances which have been required by the authors of the power, those omitted circumstances are, on that account, most unquestionably necessary to the validity of that instrument which is to affect the revocation; and in such case the inrolment becomes as essential to such an instrument as the sealing and delivery thereof. If there was no sealing and delivery, there would be no deed; and if inrolment be wanting, though there be a sealing and delivery, the prescribed instrument of revocation is not completed, and if not complete, cannot be valid and effectual for that purpose."

"Another position of my brother Williams with which we cannot agree is, that there was in the inrolment nothing personal. If by that it has been only meant that the act of inrolment need not be by the hands of T. H. himself, of that there can be no doubt. But

there can be no question but that every step of the revocation, excepting the consent of the persons named for that purpose, rested entirely with T. H.: *that he might stop when he pleased;* and that if he had resolved to leave the revocation imperfect by not pursuing it through all the necessary steps, it was entirely with him to do so. An inrolment could not have been made without his authority; one object of the inrolment might be to afford a period for consideration after all other steps to revoke the old uses and appoint new ones had been taken, and if that were the object, could a stranger, during his life, after all those steps had been gone through, be allowed to inrol the deed, and to do that which remained and was necessary to complete the revocation, without T. H.'s authority or even against his will, which would be the case if there were nothing personal in the inrolment?"

"The difference between conveyances by the Statute of Uses and at common law are unquestionably very great, and much may be done in the one way which could not be effected by feoffment, grant, and the other modes of transferring property when obtained prior to the statute. But the matters alluded to, such as limiting estates of freehold *in futuro,* the defeating estates, either wholly or partially, in favour of others than the grantor and his heirs, &c., are questions of a very different description from that now before us. We are not now considering what effect an instrument properly executed may have by means of the Statute of Uses; but whether an instrument intended to defeat uses already created and to raise new ones, has or has not been executed with the formalities and in the manner required. How far it may operate and in what way differently from a conveyance at common law, are questions dependent on the Statute of Uses; but they are questions which cannot arise until it shall be settled whether the deed to limit or revoke be or be not well executed. In *Shelley's case,* the question whether the execution vested the estate in the recoveror, was a question at common law, depending upon a rule of law, that every execution hath relation to the judgment, (*Lillington's case,* 7 Rep. 38), not at all upon the Statute of Uses. And upon that principle, though Edward Shelley died before the execution, yet inasmuch as it related back to the recovery which was in his lifetime, the uses of the recovery were holden to be executed in him, and Richard, his son, to be in the course of descent. And the same doctrine as to the relation of the execution would have holden if the proceeding had been adverse. This observation, therefore, does not distinguish this from the cases of feoffment and no livery, and of

EXECUTION OF POWERS.

Hawkins v. *Kemp.*

grants and no attornment, before the feoffor's and grantor's death; which cannot be completed for want of one of those who must be a party and consenting to the act necessary to complete the conveyance. The question before us is not, as I have observed, as to what may be the operation of the Statute of Uses upon an incomplete act becoming complete, but whether that act, without which no use can arise, could be completed after T. H.'s death; and there has been no distinction pointed out between conveyances at common law and those by the Statute of Uses, as to the consummation of the deed, which in the one case is to convey the estate, and in the other to ascertain the uses; but the distinction is as to the effects of such different instruments after they are consummate and perfect."

"The case of a recognizance cited from Hobart, 195, is very distinguishable from this case. The objection here is, that the whole which was required of T. H., to revoke the uses of his marriage settlement, was not performed. But in the case in Hobart, there was no question whether the cognizor had anything further to do. The acknowledgment before the Judge gave the recognizance the force of a record. The cognizor had done all that he had to do: nothing further was wanting on his part to bind himself or his lands, though the inrolment was necessary for the testification and perpetuating of it. This was an act which might be done *in invitum*. This distinction applies to some other of the cases cited for the plaintiff. In *Perryman's case* the feoffor had done all he had to do: after that feoffment he had no control over the estate; nothing further was wanting on his part, nor was his assent necessary to the presentment which the custom required; the procuring that to be done was for the feoffee and not for the feoffor. So, says the book, '*Caveat Emptor;* and he at his peril is to perfect all that is requisite to the assurance.' So, in the case of a surrender of a copyhold, the admittance is not the act of the surrenderor; there is nothing personal in it or to him: the surrenderee is to procure himself to be admitted, which the surrenderor has no power to prevent. The same observation holds as to the case of an exchange. And however these several instances may prove the doctrine of relation under the circumstances attending them, they all fail of proving any thing to support the plaintiff's case, unless it had been previously shewn that the inrolment in this case was an act with which T. H. was not concerned, and which might have been done without his consent. The question is not so properly a question of relation, as whether the inrolment can have any effect without T. H.'s authority, which necessarily departed with his life."

EXECUTION OF POWERS.

Hawkins v. *Kemp.*

"*Digges*' *case* in 1 Rep. 173, relied on by the defendant's counsel, is a very material case to shew that the inrolment could not be after the death of Hawkins. There, Christopher Digges being tenant for life, remainder over with a power, by deed indented to be inrolled in any of the Queen's Courts, to revoke any of the uses, and limit new ones, by deed indented and inrolled in the Court of *Common Pleas*, declared that, for the payment of his debts, &c., from the time of the inrolment of that deed in *Chancery*, all the uses should be void; afterwards he levied a fine of the lands to other uses, and after the levying of such fine the deed of revocation was inrolled in Chancery. And it was holden (by the third resolution), that until that indenture was inrolled there was no perfect revocation; and (by the fourth resolution), that the fine levied before the inrolment had extinguished the power of revocation. See how that case applies to this. If inrolment be a mere ceremony, which may be done at any time, and if, where nothing remains to be done but that, the party executing the power has done all that he has to do, that ceremony, in which, according to my brother *Williams*, there could be nothing personal in Christopher Digges, might have been done by any body. But the resolution of the Court was otherwise; for they held that the fine extinguished the power of revocation, that is, that it destroyed all authority in C. Digges to do that which remained to be done in order to complete the revocation, and nothing then remained to be done but to make the inrolment. Had it been a mere circumstance, therefore, in which there was nothing personal in C. Digges, there would have been no power remaining in him to be extinguished by the fine; but which power was so extinguished because it was not collateral, but savoured and tasted of the land, and could only be executed by him who had the estate and interest on which the power was dependent, and under whom as the donor the person must come in to whom the new uses should be limited. If, then, the power of completing the revocation by inrolment were destroyed in that case by parting with the estate, the consequences must be the same, whatever may be the means by which such a separation may happen; and, in this case, the death of T. H. has had that effect." *Hawkins* v. *Kemp*, 3 East, 410. See *Jones* v. *Dale*, 1 Barnard, 130: *M'Adam* v. *Logan*, 3 Br. C. C. 310: *Ross* v. *Ewer*, 3 Atk. 156: *Taylor* v. *Johnston*, 2 P. Wms. 586: *Wright* v. *Barlow*, 3 Mau. & S. 512: *Hopkins* v. *Myall*, 2 Russ. & M. 86: *Waterman* v. *Smith*, 9 Sim. 629. So, where the power was to be executed by a will, signed and published in the presence of witnesses, it was held, that a will, signed

Signature before witnesses.

EXECUTION OF POWERS.

Attestation.

by the donee privately, and then acknowledged by him before witnesses, was insufficient. *Simeon* v. *Simeon*, 4 Sim. 555: *Jones* v. *Dale*, 1 Sugd. Pow. 303.]

Wright v. *Wakeford.*

[In *Wright* v. *Wakeford*, 4 Taunt. 213, the power was to be executed by trustees with the consent of the *cestuis que trust*, testified by any writing under their *hands* and seals, *attested* by two witnesses: and it was held that an attestation by two witnesses in these words: "sealed and delivered by the within named" &c. was insufficient. (See *M'Queen* v. *Farquhar*, 11 Ves. 467). It was held in the same case, that an attestation by the same witnesses stating the fact of the signature, in their presence, indorsed in the deed subsequently to the death of one of the consenting parties, did not cure the defect. See *Hawkins* v. *Kemp*, *ante*, *p.* 473; S. C. 17 Ves. 454. Both of these points occurred in the case of *Doe* d. *Mansfield* v. *Peach*, 2 Mau. & S. 576; and the decision in *Wright* v. *Wakeford* was followed. See, also, *Wright* v. *Barlow*, 3 Mau. & S. 512. A statement in the body of the instrument that it is duly attested does not cure the defect in the affection itself. *Id.* Nor is the evidence of the witnesses admissible to prove that the solemnities on the part of the donee of the power were in fact observed in their presence. *Doe* d. *Hotchkiss* v. *Pearce*, 2 Marsh. 102; 6 Taunt. 402: *Moodie* v. *Reed*, 7 Taunt. 355; 1 Madd. 516; 2 Id. 516. The doctrine is well settled; but Sir *E. Sugden's* objection to it (1 Powers, 314) appears to be unanswerable. "The requisition in these cases is, that the deed shall be *attested*, but it does not require that the witnesses shall sign an attestation. According to the *words*, an attestation by witnesses of the execution would be sufficient, although they should not sign a written memorandum of the fact. Now it was decided in the case of *M'Queen* v. *Farquhar*, that where the witnesses are not required to attest the facts, a written attestation by them, containing the words 'sealed and delivered' only, does not exclude the presumption that it was also signed in their presence. The same reasoning must lead us to the conclusion, that a voluntary written attestation in the above cases must receive the same construction. The witnesses are not precluded from proving, nor a jury from presuming, that the deed was signed as well as sealed and delivered in the presence of the witnesses. If the word *attested* is, in favour of the common understanding of mankind, to be considered as requiring a written attestation, the same favourable construction must of necessity hold the words *sealed and delivered* in the attestation, to be a sufficient compliance with the power." The different construction which the

enactment of the Statute of Frauds respecting the attestation of wills has received, stands in obvious contrast with the doctrine of the above cases.]

Whether attestation may be subscribed at a different time from the execution.

[Whether the signature of the attestation must be a contemporaneous act with the execution of the appointment by the donee, or may be made at any time, while all the parties are living, and with their consent, (*Hawkins* v. *Kemp*), is not settled. In *Wright* v. *Wakeford*, the opinion of Lord *Eldon* and the majority of the Judges of the Common Pleas appears to have been, that the attestation must be a contemporaneous act. See also *Buller* v. *Burt*, 6 Nev. & M. 281.]

As to supplying defects in execution of power.

It seems [however] that during the life of the donee of the power, defects in the attestation may generally be supplied by means of a *re-execution*, either in the presence of the former or of new witnesses, or by means of a new deed properly executed and attested. *Hawkins* v. *Kemp*, 3 East, 410; 3 Prest. Abst. 75. For, as the previous deed was not a valid execution of the power, it seems that the case must be considered just in the same light as if no deed whatever had been made. According to *Cole* v. *Perkins*, 12 East, 471, new stamps do not appear to be necessary on a re-execution of a deed. [*Vide ante*, Vol. 1, p. 734. But the death of the appointee, or, as has been seen, of the appointor, is an impediment against giving operation to the deed by a subsequent attestation, for a deed cannot commence in operation at a time when the grantee or appointee is not in existence. See *Hawkins* v. *Kemp*.]

Attestation; *Doe* v. *Burdett*.

[The principle upon which the case of *Wright* v. *Wakeford* was founded, and which was more distinctly enounced in *Doe* v. *Peach*, viz. "that the attestation should be co-extensive with the things done," was carried out to the fullest extent by the decision of the Court of Exchequer Chamber in *Doe* d. *Spilsbury* v. *Burdett*, (1 Per. & D. 670; 9 Ad. & El. 936, overruling S. C. 6 Nev. & M. 259; 4 Ad. & El. 1), that an attestation in general terms, which was silent as to *all* of the particulars required by the power, was as invalid as an attestation stating some only of the particulars, although the instrument contained in the body of it a declaration that all the requisites were observed. In that case it was held by *Vaughan*, J., *Parke*, B., *Alderson* B., and *Coltman*, J., against the opinions of *Tindal*, C. J., *Bosanquet*, J., and *Gurney*, B., that a power to be executed by will, signed, sealed, and published in the presence of, and attested by, witnesses, was not well executed by a will commencing, "I, *L. H. S.*, do publish and declare this to be my last will,"—concluding, "In witness whereof, I have to this my

EXECUTION OF POWERS.

Attestation.

last will set my hand and seal, L. H. S.—Witness, A., B., & C." All the Judges disapproved of the preceding cases, and expressly declared that they considered themselves bound by them. See also *Moodie* v. *Reid*, 7 Taunt. 355: *Stanhope* v. *Keir*, 2 Sim. & St. 37: *Doe* d. *Daniel* v. *Keir*, 4 Man. & Ry. 101: *Buller* v. *Burt*, 6 Nev. & M. 281: *Hougham* v. *Sandys*, 2 Sim. 142.]

Doe v. *Burdett.*

[In *Doe* v. *Burdett*, the principle of the modern decisions was very clearly laid down by *Alderson*, B.—"Sir John Leach is reported to have said in *Buller* v. *Burt*, that when the word 'witnesses,' without more, is used in the attestation, it must be taken to affirm that all has been done in the presence of the witnesses which is stated in the body of the deed. If this principle be true, there can be no doubt that the decision in the King's Bench in this case is right. But I cannot agree to the principle which appears to me founded on a forgetfulness of the learned Judge, or, which is perhaps the case, a misapprehension of the reporter, as to the distinction which the previous cases had established between attesting and witnessing a deed. There is no doubt, as laid down by Lord *Eldon* in the case of *M'Queen* v. *Farquhar*, 11 Ves. 477, that if a power is required to be executed in a particular way in the presence of witnesses, and the attestation be general, the court or jury may look at the whole deed, and may infer as a conclusion of fact, that what is stated in the deed to have been done was done in the presence of the witnesses. The deed itself is *primâ facie* evidence of this, and may be looked at for that purpose. For in those cases the requisites may be properly ascertained by such inference, or by parol evidence of the fact. But the cases which we are considering require that the requisite shall not only be witnessed, but attested; and in order to fulfil the meaning of the word 'attested,' they decide that what the witnesses have witnessed they shall state that they saw done. And this I think can only be done by the *attestation clause itself, which contains that which the deed does not, the declaration of the witnesses themselves.* The deed shews what the party executing it did at the time, and we may perhaps infer from that the witnesses saw it done; but the attestation itself alone can, as it seems to me, *express* the facts which they saw and attest. In these powers the creators of them did not mean to leave anything to inference. That, at least, is what the case of *Wright* v. *Wakeford*, and those depending on it, must, I think, be taken to have decided on this subject. To construe the attestation by reference to the body of the deed is, moreover, directly at variance with several of the decided cases."]

Previously to these cases, the common form of an attestation of

Attestation.

a deed had always been "sealed and delivered by the within-named [*A. B.*], in the presence of." For signing was not essential to the validity of a deed at common law; sealing and delivery alone being sufficient. Perk. s. 130: *Goddard's case,* 2 Co. 5 a; Co Litt. 7. a., 35. b. However since the Statute of Frauds, 29 Car. 2, c. 3, it has been generally thought that all conveyances of lands or hereditaments must be in writing, and signed by the parties making the same, or their agents thereunto lawfully authorized by writing; and, therefore, that signing is now as necessary to the perfection of a deed as sealing. But as an attestation is not essential to the validity of an ordinary deed, *Garrett* v. *Lister,* 1 Lev. 25, and as the Statute of Frauds does not require an attestation, the old form was invariably used in attesting the execution of every kind of deed. And even after an objection had been raised in practice, in consequence of the omission of the word "signed" in the attestation of the execution of a power required to be signed and attested by witnesses, it was a general opinion of the bar that the objection was not well founded. See Sugden's Letter to Sir Samuel Romilly, "On the late Decisions upon the Omission of the word 'signed' in the Attestation to Instruments executing Powers, and on the Act for amending the Laws in that respect." However, the above decisions settled the point. But the alarm thereby excited, in consequence of various titles being liable to the same objection, induced the legislature to pass the statute 54 Geo. 3, c. 168, commonly called Mr. Preston's Act; which enacts,

Since the Stat. of Frauds, a deed should be signed as well as sealed.

The attestation of an ordinary deed need not have the word "signed."

Mr. Preston's act, 54 Geo. 3, c. 168.

Sect. 1. "That every deed or other instrument, *already made* with the intention to exercise any power, authority, or trust, or to signify the consent or direction of any person whose consent or direction may be necessary to be so signified, shall (if duly signed and executed, and in other respects duly attested) be, from the date thereof, and so as to establish derivative titles, (if any), of the same validity and effect, and no other, at law and in equity, and provable in like manner, as if a memorandum of attestation of signature, or being under hand, had been subscribed by the witness or witnesses thereto; and the attestation of the witness or witnesses thereto, expressing the fact of sealing, or of sealing and delivery, without expressing the fact of signing, or any other form of attestation, shall not exclude the proof or the presumption of signature."

Deeds, &c. *already* executed without a memorandum of attestation, deemed valid.

Sect. 2. "That this act shall extend, and be construed to extend to all deeds and other instruments already made in exercise of powers, authorities, and trusts, of sale, exchange, partition, selection, nomination, discretion, leasing, jointuring, raising portions,

To what deeds this act shall extend.

EXECUTION OF POWERS.

Attestation.

Stat. 54 *Geo.* 3, *c.* 168.

and other charges, and for appointing new trustees and other powers, authorities, and trusts whatsoever, or made for evidencing assent, consent, request, direction, or any other like circumstance in reference to the execution of any such powers, authorities, or trusts."

Act not to have a retrospective operation; nor affect any existing suit at law, &c.

Sect. 3. "That this act shall not extend, nor be construed to extend, to revive or give effect to any appointment, revocation, or other assurance heretofore made, as far as the same has been avoided by entry or claim, or by suit at law or in equity, or by any other legal or equitable means whatsoever; nor shall this act affect or prejudice any suit at law or in equity now depending, for avoiding any deed or other instrument of appointment, revocation, or assurance."

Appointments, &c., not to be affected.

Sect. 4. "That if any person who has made any such entry or claim, or who has brought any such suit, or has defended any suit for the purpose of avoiding any such appointment, revocation, or other assurance, should release the benefit of the same entry, claim, suit, or defence, within six calendar months next after the passing of this act, then such entry or claim, or suit or defence, shall not prejudice or avoid any such appointment, revocation, or other assurance, but every such appointment, revocation, or other assurance, shall be and remain in force under this act as if no such entry or claim had been made, or suit brought or defended."

No instrument, unless within the provisions of this act, to be affected.

Sect. 5. "That nothing in this act contained shall extend, or be construed to extend, to affect any question respecting any instrument not within the provisions of this act, and which may want any formality in the attestation of any witness or witnesses thereto, but such instrument shall have the same force and effect as it might have had if this act had not been made; anything in this act contained notwithstanding."

What cases within the act.

[In the case of *Hougham* v. *Sandys*, 2 Sim. 143, the leading facts were these:—A donee of a power executed an appointment of real estate by deed, (which came within the remedy of Mr. Preston's Act), after her decease, to her husband for life, and in default of children, to him in fee. The estates were sold and the proceeds invested in securities, but not, as the trusts of the settlement which gave the power required, in land, but their liability to be so invested was recognized by the parties. There was no issue of the marriage, and the donee, having survived her husband, applied part of the proceeds to her own use. The ultimate limitation in the original settlement was in default of children to the donee. It was held that the case came within the act, and that the proceeds of the

estates, not appropriated by the wife, did not pass by her will, but belonged to the heir of the husband under the appointment. Upon Mr. Preston's Act, the *Vice-Chancellor* observed, that, on the face of it, it was meant to be a remedial act for the purpose of obviating doubts which had arisen, and the act itself expresses, that it is expedient that the titles of purchasers and other persons should not be disturbed. "Now, by purchasers are meant here, as I conceive, persons who purchased by paying a valuable consideration; and the words 'other persons' mean all other persons—volunteers, and others who may be interested in such instruments; and it is more likely that that was the construction, because this question as often arises in the question of voluntary settlements, and merely family instruments, as under instruments by means of which a purchaser for a valuable consideration is to derive a title. It appears to me, therefore, that volunteers were meant to be protected by this statute, as completely as purchasers for a valuable consideration."]

EXECUTION OF POWERS.

Attestation.

Mr. Preston's Act.

[" The 3rd section has this proviso, 'That this act shall not extend' &c. The terms 'entry or claim' were, I presume, meant to apply to the case of a legal entry, and of a legal claim. The terms 'suit at law or in equity' explain themselves. Last of all come these general words, 'or by any other legal or equitable means whatsoever.' And without doubt there might be legal means, and certainly there might be equitable means, which would have the effect of avoiding an instrument which was defective in regard to the attestation. We, therefore, have to consider whether in this case there have been any other legal or equitable means, (for entry there could not be, and claim there was none, neither was there a suit at law or in equity), by which the instrument has been avoided. Avoidance of the instrument, for the purpose of making it null, is quite a different thing from so dealing with the fund, or a portion of the fund, which is the subject of the instrument, as to withdraw it from the operation of the instrument, because the instrument would have remained perfectly valid if a portion of the fund had been altogether withdrawn from it by the act of strangers. Supposing that the lands in the settlement had not been sold, and the title of the settlors had been bad as to a portion of those lands, and they had been evicted; without doubt, that would have avoided the instrument in a sense, for it would have withdrawn part of the estate on which the instrument was to operate, yet the operation of the instrument would have remained unaffected as to the remainder."]

Appointments previously avoided.

This statute is only retrospective, its operation being limited to transactions prior to the 30th of July, 1814. The question may

Act not prospective.

EXECUTION OF POWERS.

Attestation.

Mr. Preston's Act.

therefore frequently occur in regard to future executions of powers. To prevent its recurrence as much as possible, every conveyancer should expunge from his common forms any expression which may be considered to require the word "signed" to be inserted in the attestation. And solicitors should, *in every case*, make the attestation, "signed, sealed, and delivered." If the latter precaution were generally adopted, the old form would be forgotten, and the question would never arise. Sug. Pow. 257, 3rd Ed.

What cases within the act.

The act only extends to a defective attestation of signature; and therefore if a power was required to be executed by will, or any writing or appointment in the nature of a will, to be signed *and published* in the presence of, and attested by two or more credible witnesses, a will signed by the donee, and attested thus—"witness, *A. B., C. D.*," without any attestation of the publication, was not a valid execution of the power, and the case was not within the act. *Moodie* v. *Reid*, 1 Madd. 516; 7 Taunt. 355. Or if lands were limited to such uses as the donee should direct by deed or writing under his hand and seal, attested by two or more credible witnesses, the power was not effectually executed by a will, signed and sealed, but attested by the subscribing witnesses as being signed in their presence, without noticing the sealing; nor was the defect curable by calling one of the witnesses to prove, that the will was actually sealed in their presence, as well as signed. *Doe* d. *Hotchkiss* v. *Pearce*, 6 Taunt. 402; 2 Marsh. 102.

7 Will. 4 & 1 Vict. c. 26, s. 10, appointments by will to be executed like other wills.

[But the execution of powers of appointment by will has been placed upon a better footing by the recent stat. 7 Will. 4 & 1 Vict. c. 26, s. 10, which enacts, "That no appointment made by will, in exercise of any power, shall be valid, unless the same be executed in manner hereinbefore required, (*i. e.* as all wills are required by the act to be executed); and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will, made in exercise of such power, should be executed with some additional or other form of execution or solemnity."]

Attestation of publication.

Stanhope v. *Keir.*

[The decisions as to what is a sufficient attestation of the *publication* of a testamentary appointment will retain their interest for some time, notwithstanding the recent enactment. In *Stanhope* v. *Keir*, 2 Sim. & St. 37, the power was to be executed by will, signed and published by the donee, in the presence of and attested by three witnesses. The will concluded, "and this is my last will and testament made and signed in the year of our Lord 1818, on the 19th

day of November, at Gravesend, in the county of Kent. E. K. In the presence of A., B., and C." Sir *J. Leach* held the attestation insufficient; observing, that "the argument supposes the witnesses to be acquainted with the contents of the will. I cannot assume more from this attestation, than that they saw Mrs. K. sign the instrument." However, in *Moodie* v. *Reid*, 7 Taunt. 355; 1 Madd. 516; where the will ended, "these my last bequests, signed by me this 4th of February, 1812. S. M. Witnesses, R. H. and J. H.," *Gibbs*, C. J., said, that the witnesses had clearly attested the signing; but there was no attestation of the publishing, as required by the power, and therefore no appointment. His Lordship said, as to the meaning of the word "publication," "I can only suppose it to be that by which a person designates that he means to give effect to a paper as his will."]

EXECUTION OF POWERS.

Attestation of Publication.

[In *Ward* v. *Swift*, 1 Cr. & Mee. 171, the power required the will to be published and attested, and the attestation was "signed, sealed, and delivered, this 5th day of August, 1801, as the last will and testament of the said testatrix, M. S., who in her presence, and in the presence of each other, have put our names as witnesses thereto;" then followed the names. The Court certified that the power was duly executed. See a *dictum* to the same effect in *Simeon* v. *Simeon*, 4 Sim. 558; and that, where the will is required to be published in the presence of witnesses, but the power does not require any attestation, a delivery to the witnesses for the purpose of being attested is a sufficient publication, see *Lempriere* v. *Valpy*, 5 Sim. 108.]

Ward v. *Swift.*

[In *Curteis* v. *Kenrick*, 3 Mee. & W. 461; 9 Sim. 443, the power required a will published and attested, as in *Ward* v. *Swift;* but the attestation did not, as in that case, disclose the testamentary nature of the instrument. It was "signed, sealed, and *delivered*, this third day of December, 1832, in the presence of"—and then followed the signatures of the witnesses. It was held sufficient: and Lord *Abinger*, C. B., in delivering the judgment of the Court of Exchequer, placed the decision on the following grounds:—

Curteis v. *Kenrick.*

["There were two objections urged to the execution of this power. The first was the want of the word *published* in the attestation. The second, that even if the word *delivered* were held to be equivalent to *published*, it did not appear that the instrument was delivered as the last will and testament of the testatrix. The law has given no definition of the meaning of the word *published* when applied to a will. It certainly cannot mean that the whole contents of the will should be made known to the witnesses. If it mean

EXECUTION OF POWERS.

Publication.

anything less than that, there is no reason why delivery should not be publication. Delivery is a publication to those who are present, of the completion of the instrument the signing and delivery of which they are called upon to attest. If this case, therefore, were original, we should be disposed to think that delivery was equivalent to publication. But there is sufficient authority to be found for this position. First, that of Lord C. J. *Gibbs*, in *Moodie* v. *Reid;* next, that of the Vice-Chancellor in the case of *Simeon* v. *Simeon*, and also in the case of *Lempriere* v. *Valpy*, and last, though not least, that of Lord *Lyndhurst* and the other members of this court in *Ward* v. *Swift*. Upon the second point, it appears to us, that *the act to be published is the execution of the instrument, and not the nature of it*. The act of execution is not only to be in the presence of the prescribed number of witnesses, who must see it signed, but it is to be accompanied by some act or declaration in their presence, signifying that it has been *completed*. If, therefore, the word 'published' would have been a sufficient declaration of the act done, without the addition of the words 'as a last will and testament,' so the word 'delivered' equally denotes a publication, and requires no further addition."]

Mackinley v. *Sison.*

[In *Mackinley* v. *Sison*, 8 Sim. 561, the power was required to be executed by will, signed and published by the donee in the presence of and attested by two witnesses. The will concluded thus, "signed and sealed this 4th day of December, 1833. M. A. B. Witness J. T., M. W., R. B." Sir *L. Shadwell*, V. C., held, that the power was executed; observing, "that there was no legal definition of the meaning of the term 'published:' and therefore, if it appeared that a testatrix had produced her will to witnesses, and had signed and sealed it in their presence, and they had attested that she had done so, it must be taken that she had published the document in their presence." This decision goes beyond any of the preceding cases on the word "publication," even supposing that the signing and sealing of the will had been attested: but it seems to have escaped attention, that the only reference to the signature of the will was in the body of the instrument, and not in any attestation, so that, on the authority of *Doe* v. *Burdett*, *Moodie* v. *Reid*, *Stanhope* v. *Keir*, *Buller* v. *Burt*, &c., (*ante*, p. 479 *et seq.*), the signature was not duly attested as the power required. In *Doe* v. *Burdett*, *Alderson*, B., citing *Stanhope* v. *Keir*, said, "In *Stanhope* v. *Keir* the testimonium clause began, 'and this is my last will,' which, if said in the presence of the witnesses, was a clear publication; yet Sir *J. Leach* held it ill executed, saying expressly,

that 'the argument, that the declaration with which the will concluded was in fact a publication as well as a signing, and that the witnesses by adding their names to this declaration attested both facts, supposed the witnesses to be acquainted with the contents of the will.' "]

Stamp, whether equivalent to a seal.

[It may be here observed, that Lord *Kenyon*, M. R., is reported to have held, that a testamentary appointment written on stamped paper was a good execution of a power requiring an appointment under seal. *Sprange* v. *Barnard*, 2 Br. C. C. 585. *Sed quære.* See 1 Sugd. Pow. 299. It might as well have been held, that every stamped agreement is binding as a specialty. A signature may be by mark: *Blockhill* v. *Ascott*, 2 Eq. Ab. 659; or by stamping or printing. *Lemaine* v. *Staneley*, 3 Lev. 1; 1 Freem. 538: *Saunderson* v. *Jackson*, 2 Bos. & P. 239; *ante*, Vol. 1, p. 317.]

Signature by mark, &c.

Sufficient to observe solemnities prescribed.

[But no further solemnities are required than such as fall strictly within the words of the power. Therefore, a requisition that the instrument shall be executed in the presence of witnesses, is satisfied by an instrument so executed, although the witnesses sign no attestation. *Sayle* v. *Freeland*, 2 Ch. Rep. 110; 1 Eq. Ab. 345; 2 Vent. 355. And it does not seem to be requisite that the witnesses, when they are required to attest the appointment, should attest it at the same time. See *Ellis* v. *Smith*, 1 Ves. jun. 11: *Simeon* v. *Simeon*, 4 Sim. 555; and *ante*, p. 479. A power to appoint by writing, signed and sealed, may be exercised by an instrument signed and sealed, but not delivered. *Carter* v. *Carter*, Mosel. 369. And if a deed "duly attested" is required, one witness is sufficient. *Poulson* v. *Wellington*, 2 P. Wms. 535. And where a power was given to appoint leaseholds by will, duly executed and *attested*, it was held that there must be an attestation, though one was sufficient. *Sanders* v. *Franks*, 2 Madd. 147. But what shall be a "due" attestation or execution will depend on the nature of the instrument and the subject-matter of the appointment; and therefore, though a power to appoint real estate by a revocable, unattested instrument would have been good, yet a power to appoint land, whether by will simply, or by will duly attested, or by any writing in the nature of a will, was held to require a will duly attested for the passing of real estate. *Longford* v. *Eyre*, 1 P. Wms. 740: *Casson* v. *Dade*, 1 Br. C. C. 99: *Duff* v. *Dalzel*, Id. 147: *Duke of Marlborough* v. *Lord Godolphin*, 2 Ves. sen. 76. See *Wagstaff* v. *Wagstaff*, 2 P. Wms. 258: *Jones* v. *Clough*, 2 Ves. sen. 365; Belt's Supp. 360: *Wilkes* v. *Holmes*, 9 Mod. 485: *Willan* v. *Lancaster*, 3 Russ. 108. It seems to have been thought by

Attestation of will appointing real estate.

EXECUTION OF POWERS.

Will.

Lord *Gifford*, M. R., and decided by Sir *J. Copley*, M. R., that a power to dispose of customary lands by will "legally executed," could not be exercised by a will not executed according to the Statute of Frauds. See *Tuffnell* v. *Page*, 2 Atk. 37; Barn. 12; 2 P. Wms. 261, n.: *Carey* v. *Askew*, 1 Cox, 243. Where the power extended to realty and personalty, an appointment by will not duly executed to pass real estate was held good as to the personalty. *Duff* v. *Dalzel*, 1 Br. C. C. 147.]

Nature of the instrument—deed, or will.

[A power at common law to execute by any *deed* or deeds with or without power of revocation, signed and sealed in the presence of and attested by two witnesses, was held not to have been executed by a *will*, sealed and duly executed and attested. *Earl of Darlington* v. *Pulteney*, Cowp. 260. So, a joint power to husband and wife to appoint by deed was held ill executed by the husband's will, with an indorsement of the wife's approbation made by her on it after his death; and it would have been no better had the wife ratified it at the time it was made. *Bushell* v. *Bushell*, 1 Sch. & Lef. 96. See *Hutton* v. *Simpson*, 2 Vern. 723; Gilb. Ex. 115; Pr. Ch. 439. In *Darlington* v. *Pulteney*, Lord *Mansfield*, C. J., cited a case decided in the House of Lords on appeal from Ireland, of *The Earl of Roscommon* v. *Fowkes*, (6 Br. P. C. 158), where a power to appoint by *any writing* signed, sealed, and attested, "and by the same or any *other deed* to grant," &c., was held well executed by a will. See *Ross* v. *Ewer*, 3 Atk. 156. Of course, where the word "deed" does not occur to raise a difficulty, a power to appoint by *any writing* signed, *sealed, and delivered* in the presence of witnesses, may be executed by will. *Doe* d. *Delegal* v. *Holloway*, 1 Stark. 431. See *Edwards* v. *Edwards*, 3 Madd. 197. But where the power was to be executed by any writing under the hand and seal of the donee, attested by two or more witnesses, *or* by her last will to be by her signed and executed in the presence of and attested by three or more witnesses; an appointment by will, signed, sealed, and attested by two witnesses, was held bad, inasmuch as the donor had himself drawn the distinction between writings that were testamentary and writings that were not testamentary, and had required the former to be attested by three witnesses. *Bainbridge* v. *Smith*, 8 Sim. 86.]

Power to married women.

[In the case of *Sockett* v. *Wray*, 4 Br. C. C. 483, a fund was limited in trust for the separate use of a married woman for life, and after her decease to transfer the capital to such persons, &c., as she alone, whether sole or covert, should by will appoint: and it was held that, during her coverture, she could not dispose of the

capital by deed; though the Master of the Rolls seemed to think that, if her coverture ceased, she might do so; as to which see *Reid* v. *Shergold*, 10 Ves. 370, *contra*. In *Lynn* v. *Ashton*, 1 Russ. & M. 188, where a feme coverte, having a separate life estate in a fund, with a power to appoint the capital by deed, to take effect after her death, was held to have the absolute and immediate dominion over the whole. So, where a life interest was bequeathed with a general power to appoint by will or otherwise, it was held that the legatee might claim the entire fund, and that her bill filed for payment was sufficient without any formal appointment. *Irwin* v. *Farrar*, 19 Ves. 86.]

[A limitation to the heirs of A., "or as she might choose to will it," was held ill executed by a deed of disposition executed in Scotland according to the form usual there instead of a will. *Paul* v. *Hewitson*, 2 Myl. & K. 434. But any writing which has received probate in an English Court of competent jurisdiction must be taken to be a will, and, if executed in manner required by the power, must in all Courts be received as a proper instrument of appointment. *Douglas* v. *Cooper*, 3 Myl. & K. 378. But this rule does not extend to appointments of real estate, as to which probate is not necessary or conclusive evidence of the testamentary nature of the instrument. *Hume* v. *Rundell*, 6 Madd. 331. See *Ross* v. *Ewer*, 3 Atk. 156: *Shardelow* v. *Naylor*, 1 Salk. 313: *Watt* v. *Watt*, 3 Ves. 344: *Rich* v. *Cockell*, 9 Ves. 369. The question in *Douglas* v. *Cooper* was, whether a will made during coverture in exercise of a power was not revoked by a second marriage of the appointor, and it was finally held in the Ecclesiastical Court that it was not. Generally a testamentary appointment would be revoked by subsequent marriage if a devise or bequest would have been revoked under similar circumstances. *Hodsden* v. *Lloyd*, 2 Br. C. C. 534. And now every testamentary appointment made by a man or woman is revoked by marriage, "except a will made in exercise of a power of appointment where the real or personal estate thereby appointed would not in default of appointment pass to his or her heir, customary heir, executor, or administrator, or the persons entitled as his or her next of kin under the Statute of Distributions." Stat. 7 Will, 4 & 1 Vict. c. 26, s. 18.]

As to revocation of testamentary appointments by marriage.

[Another illustration of the rule that a power must be strictly executed is afforded by the doctrine of the case of *Cockerell* v. *Cholmeley*, 3 Russ. 565; 5 Man. & Ry. 509; 10 B. & Cr. 564: *Cholmeley* v. *Paxton*, 2 Moore & P. 127; 10 Moore, 246; 6 Bligh, 120, *S. C.*; where a tenant for life without impeachment of waste,

EXECUTION OF POWERS.
Deed or Will.

and a trustee with power of sale, joined in a sale of lands; the tenant for life selling the timber and receiving the purchase-money for it, and the trustee selling the land, minus the value of the timber; it was held, that, as the timber had not been severed, the power was ill exercised.]

OPERATION OF APPOINTMENT.

Whether instrument operates under the power or the ownership.

[It is sometimes important, where a power of appointment is given to the person who has the ownership in default of appointment, to know whether a disposition by such person takes effect under his ownership or under the power. A devise to an heir may, by taking effect under the power, have changed the course of descent, which it would not have done (previously to the recent act) had the devise been such as would, if made in favour of any but the heir, have operated under the ownership; or covenants may or may not run with the land according to the mode in which the disposition operates. In *Hunt* v. *Winchelsea*, 2 Ken. 444; 1 W. Blackst. 187; 2 Burr. 879, a married woman by her settlement had a life estate in lands, with remainder to her son T. H. and his issue in strict settlement, with remainder as she should appoint generally by deed or will, with remainder in default of appointment to her in fee. During her marriage she devised all her estate to her son T. H. in fee. After her death T. H. died, and it was held that his heir *ex parte materna* was entitled; and the reason given was (on the authority of the *Duke of Marlborough* v. *Lord Godolphin*, 2 Ves. sen. 76), that an appointment by will is subject to the same rules as a common devise. The principle seems to be very questionable.]

[In *Langley* v. *Sneyd*, 7 Moore, 165; 3 Br. & B. 243; 1 Sim. & St. 45, a married woman and her husband levied a fine of the wife's estate, to such uses as the wife, notwithstanding coverture, should appoint, and in default of appointment to her use in fee. The wife, after her husband's death, by will executed according to the requisitions of the power, devised all her estates to her son (who was her heir-at-law) in fee, without referring to the power. The Court of Common Pleas certified to the Vice-Chancellor that the will did not operate as an appointment, and that the son took by descent. In the course of the argument, *Burrough*, J., expressed an opinion, that, as the power was created in consequence of the donee's coverture, it ceased upon her becoming discoverte, or at least then merged in her general estate. This opinion, however, is untenable. See *Maundrell* v. *Maundrell*, 10 Ves. 263. *Park*, J., cited the rule laid down in *Parker* v. *Kett*, 1 Ld. Raym. 660; 1 Salk. 96. "When a man does such an act as cannot be good by

any other means, but by virtue of his authority, it shall be intended to be in execution of his authority; but when a man has an interest and an authority, and does an act without writing his authority, it shall be intended to be done by virtue of his interest." See Sir *Edward Cleere's case*, 6 Rep. 18, a; *Wagstaff* v. *Wagstaff*, 2 P. Wms. 260; *Maundrell* v. *Maundrell*, 10 Ves. 257.]

OPERATION OF APPOINTMENT.

Appointment or Conveyance.

[In Sir *Edward Cleere's case* the appointor had conveyed to such uses as he should appoint by will, taking a resulting use in fee; and it was held that a general devise operated under the ownership to pass two-thirds, (the land being held by knight's service *in capite*), and not under the power to pass the whole. But, of course, had an intention appeared to pass the whole, that intention, as it could not have been satisfied by a devise under the ownership, would have made the will operate by appointment. See *Tomlinson* v. *Dighton*, Salk. 239; 10 Mod. 31: *Lord Leicester's case*, 1 Vent. 278: *Keibbet* v. *Lee*, Hob. 312: *Campbell* v. *Leach*, Ambl. 740: *Wade* v. *Paget*, 1 Br. C. C. 364: *Blake* v. *Marnell*, 2 Ball & B. 35: *Denn* v. *Roake*, 8 Dowl. & Ry. 514; 5 B. & Cr. 720: *Farmer* v. *Bradford*, 3 Russ. 354: *Roe* v. *Archbishop of York*, 6 East, 86, *infra*, Vol. 4, p. 106: *Doe* d. *Daniel* v. *Keir*, 4 Man. & Ry. 101; where an instrument purporting to be an appointment, but which failed by reason of an estate in remainder being given by it to one of the witnesses, the power requiring credible witnesses was held to operate as a conveyance under the ownership.]

Apparent intention.

[Where a conveyance is expressly made under the ownership, and an appointment under the power, the intention apparent on the face of the instrument will determine in which way it shall operate. *Cox* v. *Chamberlain*, 4 Ves. 631: *Roach* v. *Wadham*, 6 East, 289; 2 Smith, 376. In *Langley* v. *Brown*, 2 Atk. 195, a tenant in tail having a general power of appointment, and the ultimate reversion in fee, by deed, appointed, limited, gave, and granted the estate and the reversion expectant on her death to her intended husband (who was in possession) in fee, charged with monies to be paid after her death. It was held, that though the deed was capable of operating by release, it should not; as the intent appeared to be not to convey any estate during the lady's life. See also *Farmer* v. *Bradford*, 3 Russ. 354.]

Roach v. *Wadham.*

[J. The case of *Roach* v. *Wadham* was shortly this:—By indentures of lease and release, dated the 23rd and 24th of June, 1791, the plaintiffs conveyed an undivided part of a certain messuage unto T. Coates and his heirs, to such uses as W. Watts should by deed

OPERATION OF APPOINTMENT.

Appointment or Conveyance.

or will appoint; and, in default of appointment, to the use of W. Watts, his heirs and assigns, for ever; yielding and paying, and the said W. Watts, and by his direction the said T. Coates, granted unto the plaintiffs, their heirs and assigns, for ever, the yearly fee-farm rent of £28, payable &c. And W. Watts, for himself, his heirs and assigns, covenanted and granted with the plaintiffs, their heirs and assigns, (amongst other things), that he, Watts, his heirs and assigns, would pay, or cause to be paid, to the plaintiffs, their heirs [and assigns, the said yearly rent of £28, on the days &c. aforesaid.[J.]]

[[J.] By indentures of the 25th and 26th of September, 1792, in consideration of £1000 paid to and by the direction of W. Watts, by Wadham and Stevens, the said Coates, by the direction of W. Watts, did, according to his estate and interest, bargain, sell, and release, and the said W. Watts did bargain, sell, alien, release, ratify, and confirm, *and also direct, limit, and appoint,* unto the said Wadham and Stevens, and one Powell, and to their heirs, the said hereditaments; to hold the same unto and to the use of them, and the heirs and assigns of the said Wadham and Stevens, for ever, as tenants in common (*a*), in trust as to the estate of Powell for Wadham and Stevens, their heirs and assigns, as tenants in common, subject to the rent reserved by the last-mentioned indenture. And Wadham and Stevens respectively covenanted with Watts, his heirs and assigns, to pay such rent in equal moieties, and to perform the covenants contained in the said indenture, and to indemnify Watts, his heirs and assigns, therefrom. Wadham died, and the present action was brought against his devisee and executor by the covenantees, (parties to the indenture of 1791), to recover a moiety of the rent. Against the plaintiffs' claim it was contended that, inasmuch as the conveyance to the testator operated as an appointment, by virtue of the power reserved to Watts, and not a release out of

(*a*) [J. The deed abounds in inaccuracies:—Coates, who is made to join in granting the rent by the first conveyance, and a conveying party in the second, had no interest, being merely a releasee to uses; and the object of vesting an estate in Powell, which no doubt was to prevent the wives of the purchasers from being dowable, was defeated by the mode of the limitation, the uses being limited to the three as tenants in common, instead of one moiety to each purchaser and his trustee as joint-tenants, which would, during the continuance of their joint seisin at least, have excluded dower. This clumsy and inefficient mode of excluding dower has deservedly become obsolete. It was liable to the obvious objection, that, if the purchaser survived his companion, the trustee during the coverture, he became solely seised, and the dower attached; if the trustee survived, the legal estate vested solely in him, which was also inconvenient.J.]

his ownership, there was no privity of estate between Wadham, the testator, and Watts, the covenantor, and consequently Wadham was not bound; and this was not denied on the other side, the great contest being, whether the deed operated as an appointment or release; and the Court being of opinion that the deed took effect under the power, it was considered as consequential on this decision that the action could not be maintained.[J.] (a)

OPERATION OF APPOINTMENT.
Appointment or Conveyance.

[The statement of the grounds of the decision, in 6 East, is quite unintelligible. Lord *Ellenborough*, C. J., is reported to have said, —"The only point was, whether the conveyance operated on the interest which Watts had, or as an execution of the power; and it was a question of mere intention; and if that be so, it ought to appear very clearly that the covenants and provisions in the deeds cannot take effect, if the conveyance should be holden to operate as an appointment, in order to authorize the Court so to determine where the instrument in its terms professes to make an appointment, and where Coates, the trustee, joins in the conveyance, and by the direction of Watts, bargains, sells, and releases to Wadham. Had it been the intention of the parties that the estate which Wadham was to take, should be derived *out of the interest* which Watts had, it would have been wholly unnecessary that Coates should have been a party to the deed; his being made a party to it shews that *something* was to be taken by way of appointment, and, if anything, there is nothing from whence there can be collected an intention that *less than the whole* should pass by those means; the reason for which is obvious, as it might prevent such objections to the title as might be made if it were derived immediately from Watts. The covenants in the deed of 1792 do not appear to us at all to militate with this construction; for had it been the intention of the parties that Wadham should take as the assignee of Watts, such covenant on the part of Wadham would have been less necessary than if he were intended to take as appointee: for, in the former case, Watts would have had some security that he would not be called upon to pay this rent arising from the circumstance of Wadham being liable to be sued by Roach. But whether the conveyance were intended to operate in the one way or the other, these covenants were fit and proper for the security of Watts; for if Wadham were the assignee, and liable to be sued in covenant, Roach, if Wadham did not pay the rent, might sue Watts on his covenant to pay it; and, in that case, Wadham's covenant was proper

Roach v. *Wadham.*

(a) [As to this point, *vide infra*, Vol. 4, p. 170.]

OPERATION OF APPOINTMENT.

Appointment or Conveyance.

for Watts's indemnity; and if Wadham were not liable to be sued by Roach, and it was nevertheless the intention of the parties that Wadham should pay the rent, a covenant from him to Watts to pay such rent, and to indemnify Watts therefrom, became the more necessary. The making Watts join in the lease and release of the 25th and 26th of September, 1792, as a party conveying, proceeded, as we conceive, only from the common caution of conveyancers, who, when a man has a power of appointment over land as well as an interest in it, make him both appoint and convey in order that if there should be any defect in the creation, continuance, or execution of the power, the conveyance may operate upon his estate and interest."]

Remarks upon *Roach* v. *Wadham.*

[It seems impossible to divine how the adding of a releasee to uses, whose *scintilla juris,* if he ever had any, was then extinct, as a party to an assurance, could indicate an intention that the assurance should operate as an appointment by another person, and how such an intention could have been collected from the instrument, when the consequence of its operating by way of appointment was, that limitations evidently intended to carry the use and the legal estate were reduced to mere declarations of trust. See *Doe* d. *Worger* v. *Haddon,* 4 Man. & Ry. 118.]

Wynne v. *Griffith.*

[In *Wynne* v. *Griffith,* 1 Russ. 283; 10 Moore, 592; 8 Dowl. & Ry. 820; 5 B. & Cr. 923; estates were limited to such uses as Humphrey Roberts and wife, Mary Roberts and Catherine Roberts, should jointly appoint; in default of appointment to such uses as Humphrey Roberts and wife and Mary Roberts, if they should survive Catherine, should appoint; and in default of appointment, as to part of the estates, to the use of Catherine for life; and as to all (subject to Catherine's life estate), to such uses as Humphrey should appoint; and in default of appointment, to the use of Humphrey in fee. All the four executed a settlement by lease and release, by which they granted, bargained, sold, released, and confirmed, directed, limited, and appointed unto A., B., C., and D., (in their actual possession, &c.) the estates included in the power, with other estates, to hold to them, their heirs, and assigns, to the then subsisting uses until an intended marriage took effect, and then to uses in strict settlement, including limitations to trustees to preserve contingent remainders, and a limitation of a term to the trustees. The case was sent by the Master of the Rolls successively to the Courts of Common Pleas and King's Bench, and the Judges of both Courts certified that the legal fee did not vest in A., B., C., and D., *i. e.,* that the settlement operated by way of conveyance,

by Catherine Roberts and Humphrey Roberts, and not by way of appointment by the four. It was suggested by *Bayley*, J., towards the close of the argument in the King's Bench, that an operation might be given to every word, by supposing Catherine and Humphrey to convey to the releasees, and then the four who have the power to direct, limit, and appoint to the uses thereinafter mentioned: "For," the learned Judge observed, "the deed does not profess to grant to the use of the releasees. There is not any single use declared in their favour." But this construction is untenable; for though there was no appointment to the use of the releasees, there was an appointment to them who carried the use if the appointment operated at all. There was clearly an error in the frame of the deed, and the most effect that, consistently with the intention, could possibly be given to the operative words, was to hold that the parties having the legal estate conveyed, and the parties having the power joined, for the purpose of putting an end to their power.]

OPERATION OF APPOINTMENT.

Appointment or Conveyance.

[Where a power of appointment over copyholds was to be executed by a will attested by three witnesses, and the fee was limited to the donee in default of appointment, it was held that the copyholds passed under the ownership by a devise contained in a will attested by two witnesses only. The want of a surrender to the uses of the will was supplied by the stat. 55 Geo. 3, c. 192. *Doe* d. *Hickman* v. *Hickman*, 1 Nev. & M. 780. See also *Sanders* v. *Franks*, 2 Madd. 147.]

Power of Revocation.]—Under a power of appointment, the donee may either appoint absolutely, or, in the deed executing the power, he may reserve a power of revocation and new appointment, although not expressly authorized to do so by the deed creating the power; *Adams* v. *Adams*, Cowp. 651: *Earl of Cardigan* v. *Montague*, Sug. Pow. 3rd Ed. 311, 690; Pow. Pow. 288; and such powers may be reserved *toties quoties*. *Lady Hastings' case*, 3 Keb. 7: *Becket's case*, Lane, 118: *Hele* v. *Bond*, Pr. Ch. 474; 1 Eq. Ca. Abr. 342, pl. 6; Sug. Pow. 3rd Ed. 312, 667: *Digges' case*, 1 Co. 173 b. And where even a particular power is given to two persons, or the *survivor of them*, with or without power of revocation, they may execute a *joint* appointment, and reserve to the survivor a power of revocation and new appointment. *Brudenell* v. *Elwes*, 1 East, 442; 7 Ves. 382.

POWER OF REVOCATION.

A power of revocation and new appointment may be reserved without authority.

The donee may regulate the mode of revocation, as it need not be attended with the same solemnities as the power of ap-

The donee may regulate the mode of revo-

POWER OF REVOCATION.

cation; but not the future appointment.

pointment; *Winstandley's case*, 3 Keb. 7, cited; but he cannot, on a future appointment, dispense with the necessity of conforming to the requisites of the original power; Prest. Watk. Conv. 149: *Sir S. Jones* v. *Lady Manchester*, Vend. 198; for, by the revocation, the original power is revived. 2 Pres. Abs. 274, 277.

Appointment by will is revocable, *aliter* if by deed.

A *will* is always revocable; and therefore where the power is executed by will, an express power of revocation need not be reserved. *Hatcher* v. *Curtis*, 2 Freem. 61; 2 Eq. Ab. 671, pl. 3. And see 1 Ves. 139; 2 Ves. 77, 612: *Lisle* v. *Lisle*, 1 B. C. C. 533: *Laurence* v. *Wallis*, 2 B. C. C. 319. But where the power is executed by *deed*, unless a power of revocation be reserved in the deed, the appointment cannot be revoked, although there be a power of revocation in the instrument creating the power; *Worrall* v. *Jacob*, 3 Meriv. 256; [or although the appointment is to volunteers; *Bolton* v. *Bolton*, 3 Swanst. 414: see *Naldred* v. *Gilham*, 1 P. Wms. 577;] and even if the original power expressly anthorize the donee in the most unlimited terms to appoint, and to revoke his appointments from time to time; for the law will not endure a prospective power like this, but on every execution a new power of revocation must be reserved. *Hele* v. *Bond*, Pr. Ch. 474. The decisions as to the necessity of reserving a power of revocation in order to authorize a party to revoke an appointment by deed, have always been considered to apply to personal as well as to real estate. Sug. Pow. 324, 3rd Edit. A power of sale, in whatever form it may be given, implies a power of revocation and new appointment. *Bishop of Oxford* v. *Leighton*, 2 Vern. 367.

Power of revocation implies a power to limit new uses, when.

And although in the *original* settlement there be only reserved a power to revoke the uses thereby declared, yet a power is implied to limit new uses out of the first seisin, and may be executed accordingly; *Fowler* v. *North*, 3 Keb. 7: *Smith* v. *Wheeler*, 2 Mod. 40: *Anon.*, 1 Cha. Ca. 242; "for he that has power to revoke, has power to limit." S. C. nom. *Witham and Bland's case*, 3 Swanst. 277; 2 Ch. Ca. 46, (*contra*, *Anon.*, 1 Stra. 584. But that case seems of doubtful authority, and it is reported "*ex relatione aliorum*"). [See as to that case, 1 Sugd. Pow. 476.] However, it is otherwise if a contrary intention can be collected from the whole settlement; or if an estate be settled to uses with a power of revocation, and it be declared, that upon the revocation the uses shall cease, and the estate shall remain to the use of the settlor and his heirs; after revocation he cannot limit new uses out of the old seisin, it being exhausted on the execution of the use to him in fee. *Atwaters*

v. *Birt*, Cr. El. 856. New uses can only be raised by means of a conveyance under the ownership.

POWER OF REVOCATION.

But every power reserved in a deed *executing* a power, will be strictly construed; and therefore a mere power of revocation in such a deed will not authorize a limitation of *new* uses. *Digges' case*, 1 Co. 173 b: *Ward* v. *Lenthall*, 1 Sid. 343.

It seems that a power of revocation may be reserved on the execution of a power simply collateral.

Upon the authority of *Wall* v. *Thurborne*, 1 Vern. 355, it has been thought, that a power of revocation cannot be reserved on the execution of a power *simply* collateral, when it is not authorized by the original power. See Powell on Powers, 307. In that case the wife had a power under her husband's will to appoint an estate amongst her daughters; and she executed the power with power of revocation, but never actually revoked the settlement. "As to the power of revocation," it was said, "the case may be eased of that, for it was only an authority in the wife; and that being once executed, she could not reserve such power to herself." "In the first place, then, (says Mr. Sugden), it appears that the point did not call for a decision, and it is very far from clear, that the dictum was not the argument of the counsel. Such a doctrine would be very inconvenient, and certainly cannot be considered as settled." [Sugd. Pow. 485. In *Re Austin*, 27th of July, 1823, (1 Sugd. Pow. 486), the Vice-Chancellor said, that this point had been long overruled; it was now decided, that those who can make an absolute appointment can also make a qualified one.]

Donee not bound to reserve a power of revocation.

If a power require the deed of revocation and limitation of new uses to contain a power to revoke by deed, yet upon the execution of such reserved power of revocation the donee need not reserve another power to revoke. *Phillips* v. *Phipps*, V. C., M. T., 1818; Sugd. Pow. 322, 3rd Ed.

Power may be so expressed as to require an irrevocable appointment.

[A power may, of course, be so expressed as to shew that any appointment to be made in exercise of it is to be irrevocable. *Piper* v. *Piper*, 3 Myl. & K. 159, where Lord *Brougham*, C., said—"Suppose the instrument creating the power had fixed the day when it must be executed, it seems impossible to doubt that revocation would have been excluded, because there could be nothing more contrary to the constitution of the power than such an execution of it. In like manner I should have no doubt, that if a power is directed to be executed on or before a given day, a clause of revocation may be inserted, but then it can only enable the new appointment under it to be made on or before the given day; that is, the whole execution must be within the limits prescribed; for *Adams* v. *Adams*, Cowp. 651, and the other cases, all assume that the

POWER OF REVOCATION.

new appointment, however often it may be repeated, is always an exercise of the original power. I may however add, that though I hold these positions to be clear, I am not aware that there has ever been a decision upon the case I am supposing. The matter has been approached in some of the cases, as *Reresby* v. *Newland*, 2 P. Wms. 93; perhaps, too, in a case of considerable obscurity, *Harris* v. *Graham*, 2 Roll. Ab. 329, pl. 12; and it is not easy to see how some discussion of it was avoided in *Cole* v. *Wade*, 16 Ves. 27, at the Rolls, and still more in the same case, when it came before Lord Eldon, under the name of *Walter* v. *Maunde*, 19 Ves. 424."]

TIME OF EXECUTION.

Time when power may be executed.

Time of Execution.]—[Generally a power may be executed at any time during the life of the donee; *Coleman* v. *Seymour*, 1 Ves. sen. 209: *Parsons* v. *Parsons*, 9 Mod. 464; but it must be completely executed as to every formality within that time, *ante*, p. 473. Sometimes the continuance of the power is expressly limited, and then the spirit and not the letter of the limitation will be regarded. Thus, where an estate was limited to trustees upon trust to convey to the *cestuis que trust* at a certain period, and a power of sale was given to the trustees "during the continuance of the trusts," it was held that the trustees, having neglected to convey to the *cestuis que trust* at the proper period, could not afterwards exercise the power, although the trusts were in one sense still continuing. *Wood* v. *White*, 2 Keen, 664.]

Power to be exercised on a contingency.

[Where the appointment is only to take effect on a contingency, a question may arise whether an appointment made before the contingency happens, will become effectual when it does happen. In *The Countess of Sutherland* v. *Northmore*, 1 Dick. 56: *Sclater* v. *Travell*, 3 Vin. Ab. 427, pl. 8, S. C., a power was given to a married woman, in case of the death of her husband in her lifetime, and there should be a failure of issue of the marriage living at her death, to charge portions. She executed the power in her husband's lifetime, and after him died, leaving no issue of the marriage; and it was held good. See *Goldsmid* v. *Goldsmid*, Turn. & R. 445. So, in *Dalby* v. *Pullen*, 10 Moore, 300, where land was devised to A. for life, with remainder to her son in fee, but in case he should die without issue in A.'s lifetime, and there should be no issue of her body then living, to such uses as she should appoint by deed or will. It was held that an appointment and conveyance by A. and her son was a good execution of the power, upon the event happening of the son's death in A.'s lifetime and failure of the issue of A.]

EXECUTION OF POWERS.

Time of Execution.

[In a recent case a testator bequeathed a fund in trust for his daughter for life, and after her death to be transferred to his niece, her executors, &c., in case she should be then unmarried, but if she should be then married, to be transferred to such persons as she, *whether sole or married*, should by deed or will appoint, and in default of appointment the interest to be paid for her separate use for life, and the capital to her executors. The niece married after the testator's death, and an appointment by her by will during her coverture, and in the lifetime of the daughter, was held a good exercise of the power. *Ashford* v. *Cafe*, 7 Sim. 641.]

[In *Clark* v. *Seymour*, 7 Sim. 67, a reversion in fee was settled in strict settlement, with a power for the trustees at any time thereafter, with the consent of the tenant for life under the settlement, to sell or exchange the lands for other lands in fee *in possession*. It was held that a sale by the tenant for life in possession, the tenant for life under the settlement, and the trustees, was a good exercise of the power, and it would have been the same had the tenant for life in possession not joined. An objection that might have been taken to the sale as made, namely, that the power required the trustees to sell for a separate consideration, had been waived by the purchaser. See Butl. Co. Litt. 271. b., n. In *Coxe* v. *Day*, 13 East, 118, an estate was settled to A. for life, remainder to his sons for life, with powers to A. during his life, and *after his decease* to his son, to lease. The father having conveyed his life estate to his son, the son leased during his father's life, but it was held not to be authorized by the power.]

Contingency as to the person.

[But where there is a contingency as to the person who is to execute the power, an appointment by anticipation will not generally be supported. Thus, in *Doe* d. *Calkin* v. *Tomkinson*, 2 Mau. & S. 165, where a testator devised all his estate to his two sisters, or to the survivor of them, and to be disposed of by the survivor as she might by will devise, it was held that there was no tenancy in common, and that a will made during the lives of both sisters by the sister who eventually survived, was not an execution of the power. Lord *Ellenborough*, C. J., distinguished *Lady Travell's case*, observing that there the power was given to a designated person to be executed on a contingency; here it was given to a contingent person. And a joint appointment, where the power is to be executed by the survivor, is equally bad. *M'Adam* v. *Logan*, 3 Br. C. C. 310. See *Hole* v. *Escott*, 2 Keen, 444; 4 Myl. & Cr. 187.]

[When a power is to be exercised with the consent of any person, the obtaining of such consent is generally (see *Lee* v. *Vincent*, Cr.

EXECUTION OF POWERS.

Time of Execution.

Consent.

El. 26) a condition precedent to the exercise of the power; and an execution made without consent will not be set up by subsequent assent. This was decided by the Court of Common Pleas, in the case of *Greenham* v. *Gibbeson*, 4 Moo. & Sc. 198, upon a power to vary securities with the consent of trustees; and in Chancery in the case of *Bateman* v. *Davis*, 3 Madd. 98, upon a power to trustees of a marriage settlement, to raise a sum of money for the husband with the consent of the wife. See *Cowgill* v. *Lord Oxmantown*, 3 You. & C. 369.]

[It was thought in an early case, that when the written consent of a person is made necessary to the validity of an appointment, and such person merely joins in the deed of appointment for another purpose, without expressly assenting, there is not such an assent as the power requires, and this seems to be the correct opinion; *Lord Mordaunt* v. *Earl of Peterborough*, 3 Keb. 305.]

ILLUSORY APPOINTMENTS.

Power of selection.

What words will not authorize an exclusive appointment.

Exclusive and illusory Appointments.]—Under a power to appoint "to all and every the child and children," *Pocklington* v. *Bayne*, 1 B. C. C. 450, or "unto and among" the children of different persons, every one must have a share. *Malin* v. *Keighley*, 2 Ves. jun. 334, 533. So even under a power of disposal "unto and among *such* children begotten between us, and in such proportion," as the wife shall appoint; it was held that no child could be excluded. *Alexander* v. *Alexander*, 2 Ves. sen. 640.

However, powers to appoint "to such of my children, as my wife shall think fit;" *Lief* v. *Saltingstone*, 1 Mod. 189; "to one or more of my children, as my wife shall think fit;" *Thomas* v. *Thomas*, 2 Vern. 513; "to be at my wife's disposal, provided it be to any of my children;" *Tomlinson* v. *Dighton*, 1 P. Wms. 149; "amongst all or such of my children;" *Macey* v. *Shurmer*, 1 Atk. 389; "to and amongst such of my relations, in such parts, shares, and proportions, as my wife shall think proper;" *Spring* d. *Titcher* v. *Biles*, 1 T. R. 435 n; "for the use of such of the children or child, and issue of the marriage, as well male as female, and in such shares, parts, and proportions, and for such estate or estates;" *Doe* d. *Wilmett* v. *Alchin*, 2 B. & Al. 122; "unto and amongst all *such* child or children of *A.*, in such parts, shares, and proportions, manner and form, as *B.* should appoint;" *Wollen* v. *Tanner*, 5 Ves. 218: see also *Tucker* v. *Tucker*, 13 Pri. 607: *Swift* d. *Huntley* v. *Gregson*, 1 T. R. 432; have been held to enable the donees to appoint exclusively to any of the objects. Sug. Pow. 482, 3rd Edit.; 5 Ves. 857. The word "such" standing un-

explained, imports an intention to give the power of selection. 2 Barn. & Al. 125.

ILLUSORY APPOINTMENTS.

Power of Selection.

In *Kemp* v. *Kemp*, 5 Ves. 849, Lord *Alvanley* held, that a power to appoint "amongst the children as the donee shall think proper," did not authorize an exclusive appointment. He treated the word "amongst" as equivalent to "all and every," which words are mandatory that each shall have a share. *Menzey* v. *Walker*, For. 72. And in *Gibson* v. *Kinvin*, 1 Vern. 66, upon a gift to the wife "upon trust and confidence that she would not dispose thereof but for the benefit of her children," it was determined that no child could be excluded. Sug. Pow. 482, 3rd Ed. [If there is a power of selection among a class, and in the event there is only one individual of that class, such one must take the whole. *Roe* d. *Buxton* v. *Dunt*, 2 Wils. 336.]

[[J]In *Garthwaite* v. *Robinson*, 2 Sim. 43, power was given to A. to dispose of a certain fund "in such manner as she thinks fit, amongst *all or any one or more of* her children, if she should have any; and if she hath none, then amongst my present or future grandchildren or their respective issue, as she likes best." It was admitted that this was a power of selection as to the *children;* and the question was, whether the words in italics applied also to the *grandchildren*, so as to call for the same construction as to them; the Court held, that the words did not extend to the grandchildren, and that A. was bound to give to each grandchild living *at her death* a substantial share.[J]]

At law any share, however nominal or illusory, will satisfy the terms of the power. 1 T. R. 438 n.; 5 Ves. 61. But (previously to Sir E. Sugden's Act, (stated *infra*, Vol. 6, p. 560), and which is not retrospective), in equity some shares must have been given which did not come within the meaning of an illusory appointment. What would be held illusory was doubtful, unless the criterion was fixed by the determination of Lord *Alvanley*, that where a party is, in default of appointment, to take a third share, a gift of a hundred and ninetieth share to him is illusory: it was here Sir William Grant drew the line; so that any share, which, squared by this rule, would exceed that in amount, was not deemed illusory. Sug. Pow. 493, 3rd Ed. But the old rule, which left a discretionary power in the Judge, to be directed by the circumstances of each case, has been countenanced by Lord *Eldon*, though certainly with restrictions. The following is the result of the leading cases on this subject:—In *Wilson* v. *Piggott*, 2 Ves. jun. 356, the proportion given to one of four children amounted only to one-sixteenth of

ILLUSORY APPOINTMENTS.

Power of Selection.

the whole fund, and Lord *Alvanley* held it to be good, although it was one-fourth less than an equal proportion. In *Alexander* v. *Alexander*, 2 Ves. sen. 640, the proportion given was only a sixtieth part of the fund to one of five children; but the point was not raised, because the child did not claim more; 9 Ves. 392. In *Kemp* v. *Kemp*, 5 Ves. 849, the fund amounted to nearly £1900. There were three objects: to one £50 was given, to another £10, and the residue to the other. The first therefore had only a thirty-eighth share, and the second only a one-hundred and ninetieth share of the entire fund, when, upon an equal division, each would have been entitled to a third. Lord *Alvanley*, in delivering judgment, but lamenting that the Court did not follow the rule of law, said, that he was bound to say the bequest of the £10 was clearly meant as an illusion, and not an execution. The discussion of this case turned not upon the £50, but upon the £10. 12 Ves. 125. In *Butcher* v. *Butcher*, 9 Ves. 312, there were nine persons, and the fund amounted to about £17,000. To some of the children £200, 3*l.* per Cents., only was given; so that, reckoning the stock at even 70*l.* per cent., the share did not exceed a hundred and twenty-second part of the fund. The late Master of the Rolls, after expressing his opinion of the rule, said, "It is impossible not to feel the disposition of Lord *Alvanley*, as expressed in *Spencer* v. *Spencer*, (5 Ves. 368), to get rid of it altogether. But I am not authorized to act upon that disposition: I am bound to follow the precedents as far as they have gone; but having no principle to guide me, I cannot go a step farther. As therefore no case has been found in which a sum of this amount has been declared illusory, there is no ground upon which I think myself justified in determining that this is an invalid appointment." In *Bax* v. *Whitehead*, 10 Ves. 31, the fund was £2500 South Sea Annuities, and there were only two objects of the power; to one £100 stock was given, and the residue to the other. The first therefore had only a twenty-fifth share; and the Master of the Rolls, referring to his former decision, held the appointment not illusory. In *Mocatta* v. *Lonsada*, 12 Ves. 123, the fund was £2500. There were five objects of the power. To some the donee of the power gave only a share equal to about a seventy-fifth of the fund, it amounting to 33*l.* 6*s.* 8*d.* each, when upon an equal division they would have been entitled to £500 each. The Master of the Rolls said, that he adhered to the rule he laid down in *Butcher* v. *Butcher*, that he would go so far as he was bound by authority, and no further. In *Dyke* v. *Sylvester*, 12 Ves. 126, the disproportion was still greater. The fund amounted to about

£7100, and there were nine objects of the power, seven of whom had only about £71 a piece given to them. The point was given up in argument; and the Master of the Rolls thought that there was nothing in an objection taken that there might be more children; there was so little probability, under the circumstances, that the shares would ever be reduced below the standard, under which he had said he should consider himself bound by the authorities.

Lord Eldon's opinion.

On appeals to Lord Chancellor *Eldon* in *Bax* v. *Whitbread*, 16 Ves. 15, and in *Butcher* v. *Butcher*, 1 Ves. & B. 79, against the decrees of the Master of the Rolls in those cases, the Lord Chancellor in both instances confirmed the decrees, the shares not being in his opinion illusory; but he expressed his dissatisfaction with the negative rule adopted by the Master of the Rolls, and appeared inclined to the old rule, which permits the Court to exercise a discretion, according to the peculiar circumstances attending each case. By which, according to the Master of the Rolls, "the Court keeps itself in a state of constant embarrassment, and those who have such powers to execute in a perpetual uncertainty, without aiming at any object of the least importance." 9 Ves. 398. These difficulties are equally recognised by the Lord Chancellor; for in *Butcher* v. *Butcher*, 1 Ves. & B. 96, 97, he says, "Having given to this subject the most deliberate attention, I find it in such a state of contradiction, both from *dicta* and decisions of great judges, that, if I had to advise, I could not say how such a power can be safely exercised. The doctrine is as loose as this; that, though a power is given to be exercised according to discretion as to the shares, yet, in effect, unless the judgment of the person who was to exercise that power, agreed with the judgment of the judge who had to decide upon the execution, it is impossible to know, whether the execution would or would not be good."

Illusory appointment excused by a provision in some other way.

If the person exercising the power provided for an object of the power in some other way, that prevented the appointment from being illusory. *Bristow* v. *Warde*, 2 Ves. jun. 349: *Spencer* v. *Spencer*, 5 Ves. 368: *Kemp* v. *Kemp*, 5 Ves. 861: *Mocatta* v. *Lonsada*, 12 Ves. 124. In *Spencer* v. *Spencer*, 5 Ves. 368, Lord *Alvanley* said, "If one child is already provided for, I desire it not to be understood as my opinion, that in such a case the party would be bound to give that child anything." See also 12 Ves. 124. In another case, his lordship inclined to think, that an otherwise illusory share might be excused, where there is an actual provision made, even where it does not move from the person executing the power. *Vandezee* v. *Aclom*, 4 Ves. 785. And this latter doctrine

ILLUSORY APPOINTMENTS.

Power of Selection.

was countenanced by Lord *Redesdale*. *Lysaght* v. *Royle*, 2 Sch. & Lef. 152; and see 16 Ves. 25; 1 Ves. & B. 95. But it is clear, that a provision made by the person creating the power would not have had that effect. *Kemp* v. *Kemp*, 5 Ves. 861.

Illusory appointment of real estate.

A power to appoint to children will not authorize an appointment to grandchildren.

The doctrine of illusory appointments extended to real as well as to personal estate. *Pocklington* v. *Bayne*, 1 B. C. C. 451; see 5 Ves. 861; 1 Ves. & B. 99. But the chief ground of the determination in *Pocklington* v. *Bayne*, seems to have been for an excess in the execution of the power, by appointing to grandchildren in remainder, and to trustees to preserve contingent remainders, when the power only authorized an appointment to children. See *Alexander* v. *Alexander*, 2 Ves. sen. 640: *Brudenell* v. *Elwes*, 1 East, 442; 7 Ves. 382: [*Hewitt* v. *Lord Dacre*, 2 Keen, 622.]

STAMP ON APPOINTMENTS.

[The first schedule to the General Stamp Act (55 Geo. 3, c. 184) contains the following clause :—

	£	s	d.
APPOINTMENT in execution of a power of land or other property real or personal, or of any use or interest therein, where made by any writing not being a deed or will .	1	15	0
And where the same, together with any schedule, receipt, or other matter put or indorsed thereon, or annexed thereto, shall contain 2160 words, (being the amount of thirty common law folios or sheets of seventy-two words each), or upwards, then for every entire quantity of 1080 words (or fifteen common law folios or sheets) contained therein over and above the first 1080, a further progressive duty of	1	5	0

If made by deed, see *Deed* (imposing the same duties).]

APPOINTMENT.

PRECEDENTS.

1. APPOINTMENT *of a Jointure* (*a*) *either before or after Marriage, and of a* TERM *for securing it, under a Power in a Settlement.* — 1. JOINTURE.

THIS INDENTURE, made the —— day of ——, BETWEEN [*husband*], of &c., of the first part; [*wife*] (*b*), the wife of the said [*husband*], whose maiden name was [*maiden name*], of the second part; and (*c*) [*trustees*], of &c., of — Parties.

(*a*) [As to jointures, *vide infra*, tit. SETTLEMENT.]

(*b*) If the jointure be made before marriage, the intended wife will, of course, be always described by her maiden name. And if any portion be paid by her father, guardian, &c., make the person paying it a party of the third part. — BEFORE MARRIAGE.

If the lady be a minor, add, — ON A MINOR.

"[*father* or *mother*, &c.], of &c., the father and natural guardian of the said [*intended wife*]."

If the father be dead, and a testamentary guardian has been appointed, add, — WITH CONSENT OF TESTAMENTARY GUARDIAN.

"[*guardian*], of &c., the guardian of the person and estate of the said [*intended wife*], appointed by the last will and testament of [*father*], of &c., her late father, deceased."

If a Chancery guardian has been appointed, add, — CHANCERY GUARDIAN.

"[*guardian*], of &c., the guardian of the person (*or*, of the person and estate) of the said [*intended wife*], appointed by the High Court of Chancery.

(*c*) If the power of jointuring does not authorize the creation of a term for securing the rent-charge, as to which see *Wykham* v. *Wykham*, 18 Ves. 395, a trustee would be unnecessary and improper. For at law, if an estate be made to others in fee, or for the life of the jointress, upon trust for her; yet if the estate remain in them, although it be for her — Unless there be a term, trustee unnecessary. A jointure limited to a trustee is no bar at law.

1. JOINTURE.

Recital of settlement, whereby

the third part. WHEREAS, by indentures of lease and release, bearing date respectively on or about &c., the release being made between [*father*], esquire, of the first part; [*trustee having the legal estate*], of the second part; the said [*husband*], therein described as the only son and heir apparent of the said [*father*], of the third part; [*releasees*], of the fourth part; and [*trustees of term*], of the fifth part;

manors, &c. were conveyed,

All those several manors, &c. were granted, released, and assured by the said [*trustee having the legal estate*], and [*father*] to the said [*releasees*] and their heirs, *To the use* of

to the use of trustees for five hundred years;

the said [*trustees of term*], their executors, administrators, and assigns, for the term of five hundred years, without impeachment of waste, *Upon the trusts* thereinafter mentioned:

remainder to the use of father for life; remainder to the use of husband for life;

And after the expiration of the said term, and in the meantime subject thereto, *To the use* of the said [*father*] and his assigns, during his life, with remainder *To the use* of the said [*husband*] and his assigns, during his life; with remainder *To the use* of the said [*releasees*] and their heirs, during his life, *In trust* to support the contingent remainders;

with remainders over.

with divers remainders over. *And* it was by the said indenture of release declared, that it should be lawful for

Recital of power to husband

the said [*husband*], by any deed or deeds, or writing or writings, with or without power of revocation, to be by him sealed and delivered in the presence of two or more credible witnesses (but subject and without prejudice to the use or estate thereinbefore limited to the said [*father*], for his life, and to the raising and payment of certain sums of £—— and £——, and the interest thereof respectively, and such other principal money and interest as should happen to be thereafter charged and secured by the said [*father*], in pursuance of a power thereinbefore reserved to him in that behalf, and subject to the terms of years created, and to be created, for securing the same sums, principal money and interest respectively, and to the respective trusts of the same terms) to grant, limit, or appoint to, or to the use of

to appoint to

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benefit, and by her assent, and by express words is declared to be in full satisfaction of her dower, yet this is no bar of her dower at law, for there it must be made to herself. Co. Litt. 36. b.; *Hervey* v. *Hervey*, 1 Atk. 563. But a trust estate, being equally as certain and beneficial as what is required at law, it is a good equitable jointure in bar of dower. *Vide infra*, tit. SETTLEMENT. These remarks do not apply to the dower of widows married since the year 1833. Stat. 3 & 4 Will. 4, c. 105.

A trust estate is a good equitable jointure.

any woman or women whom he the said [*husband*] might thereafter happen to marry, for her or their life or lives, and for her or their jointure or jointures, and in bar of her or their dower, (over and above the jointure which he the said [*husband*] is empowered to make by a certain indenture of release, bearing even date therewith), an annual sum or yearly rent-charge, not exceeding such annual sum as should be proportioned to the fortune or fortunes which he the said husband should actually and effectually have and receive with such woman or women respectively, after the rate of £80 by the year, for the sum or value of £1000, unless any such annual sum would, after that rate, be less than the sum of £200 by the year, in which case it should be lawful for the said [*husband*] to grant, limit, or appoint as aforesaid, any annual sum or rent-charge not exceeding the sum of £200 by the year, for such jointure or rent-charge, without regarding the said rate; such annual sum or sums to be payable tax free, and without any deductions whatsoever, and to be issuing out of, and charged and chargeable upon, all or any part of the manors and hereditaments thereinbefore expressed to be thereby granted and released, with powers and remedies for recovering the same when in arrear; and such term and terms of years, for better securing the due payment thereof, to take effect immediately after the decease of the said [*husband*] (but subject and without prejudice as aforesaid); and such grant, limitation, or appointment to be made either before or after such intermarriage, as to the said [*husband*] should seem meet. AND WHEREAS (*c*) the said [*husband*] hath lately intermarried with the said [*wife*], formerly [*maiden name*]. NOW THIS INDENTURE WITNESSETH,

1. JOINTURE.

any after-taken wife for her jointure in bar of dower,

(over and above the jointure he is empowered to make by another deed),

any annual sum, in proportion to wife's fortune,

with powers and term for securing the payment.

Recital of marriage.

Testatum.

(*c*) If before marriage, say,

BEFORE MARRIAGE.

"AND WHEREAS* a marriage hath been agreed upon, and is intended to be soon had and solemnized between the said [*intended husband*] and [*intended wife*]."

Recital of intended marriage.

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* If the lady be a minor, add,

"by and with the consent and approbation of the said [*father or guardian*], a marriage" &c. *ut supra*.

WITH CONSENT OF GUARDIAN.

1. JOINTURE.

that (*d*) the said [*husband*], in pursuance of the power or authority to him in that behalf given or reserved, in and by the said indenture of release, and by force and virtue thereof, and of every other power, right, and authority to him reserved or given, in him vested, or in anywise enabling him in this behalf, by this deed, by him sealed and delivered in the presence of two credible witnesses, (*But subject* and without prejudice to the use or estate by the said indenture of release, limited to the said [*father*] for life (*e*), and to the raising and payment of the said sums of £—— and £——, and the interest thereon respectively, or otherwise subject as in the said indenture of release is mentioned), *doth* grant, limit, and appoint, unto the said [*wife*], the wife of the said [*husband*], and her assigns, during the term of her natural life, in case (*g*) she should survive him the said [*husband*], *One* annual sum or yearly rent-charge of £—— of lawful British money to be yearly issuing, arising, and payable out of, and charged and chargeable upon all and singular the said manors and hereditaments, comprised in the above-recited indentures of the —— and —— days of ——, and by the same indenture of release respectively granted and released,

Appointment by husband, (subject to his father's life estate, and to the raising of several sums of money),

unto his wife, in case she should survive him, of a yearly rent-charge, payable out of manors, &c. comprised in settlement.

BEFORE MARRIAGE.

(*d*) If before marriage, say,

"in consideration of the said intended marriage."

PORTION.

And if any portion be paid, add,

"and of the sum of £——, of lawful British money to the said intended husband, in hand well and truly paid by the said [*father*], at or immediately before the sealing and delivery of these presents, in full for the marriage portion of the said [*intended wife*], the receipt and payment of which sum of £——, he the said [*intended husband*] doth hereby acknowledge, and thereof, and of every part thereof, doth acquit, release, and discharge the said [*father*], his heirs, executors, and administrators, and every of them for ever, by these presents, he the said [*intended husband*], in pursuance" &c. *ut supra.*

(*e*) The above appointment is subject to a previous life estate of the husband's father; but the parts of the above form, not included in parentheses, are adapted to ordinary circumstances.

BEFORE MARRIAGE.

(*g*) If before marriage, say,

"in case the said intended marriage should take effect, and in case the said [*intended wife*] should survive" &c. *ut supra.*

1. JOINTURE.

or expressed and intended so to be, with their respective rights, members, and appurtenances. To HAVE, hold, receive, and take the said yearly rent-charge of £—— (subject as aforesaid) unto the said [*wife*] and her assigns, during her life, in case she should survive the said [*husband*]; such yearly rent-charge of £—— to be for the jointure of the said [*wife*], and in bar of her dower (*h*), and to be paid to the said [*wife*], or her assigns, at or in the common dining-hall of Lincoln's Inn, in the county of Middlesex, by equal half-yearly payments, at or on the —— day of ——, and the —— day of ——, in each and every year, by equal portions, free from taxes, and without any other deductions whatsoever; the first half-yearly payment thereof to begin and be made on such of the said days as shall first happen after the decease of the said [*husband*]. AND the said [*husband*] *doth* hereby further grant, limit, and appoint, that in case the said annual sum or yearly rent-charge of £——, or any part thereof, should happen to be in arrear and unpaid by the space of fourteen days, next over or after either of the days or times hereby appointed for the payment thereof, and on which the same ought to be paid as aforesaid, *Then*, and in every such case, and so often as it shall so happen, it shall and may be lawful to and for the said [*wife*] and her assigns, into and upon the said manors, &c. so charged with the payment of the said annual sum, or intended so to be, or into and upon any part thereof, to enter and distrain for the same annual sum, and all arrears thereof, and the distress and distresses then and there found and taken, to take, lead, drive, carry away, and impound, and in pound to detain and keep, until the said annual sum, and all arrears thereof, and all costs, charges, damages, and expenses whatsoever, sustained, or occasioned by or attending the making, taking, and keeping any such distress, shall be fully paid and satis-

Habendum to wife for life, in case she should survive her husband;

such rent-charge to be for her jointure, and in bar of dower: and to be paid half-yearly, without any deduction.

Appointment of a power of distress for a jointure rent-charge.

(*h*) If it be the intention, add,

IN BAR OF FREE-BENCH.

"free-bench, and thirds, at the common law, or by custom, or otherwise, which she can or may, or otherwise might have, claim, or be entitled to, in, to, or out of all or any of the messuages, lands, tenements, or hereditaments whereof he the said [*husband*] now is, or shall or may, during the said (*intended*) coverture, be seised or entitled; the said yearly rent-charge to be paid" &c., *ut supra*.

1. JOINTURE.

fied; *And* in default of payment thereof in due time after any such distress or distresses shall be made and taken, to appraise, sell, and dispose of such distress or distresses, or any part thereof, or otherwise to act therein according to due course of law, in like manner as in cases of distress for non-payment of rent, reserved upon common leases; *To the intent,* that thereby and therewith the said [*wife*], or her assigns, shall and may be fully paid and satisfied the said annual sum, and all arrears thereof, or so much thereof as shall be remaining due and unpaid, and all costs, charges, and expenses whatsoever, sustained or occasioned for or by reason of the non-payment thereof: AND FURTHER, that in case the said annual sum, or any part thereof, should at any time happen to be behind and unpaid by the space of twenty-eight days, next over or after either of the said days or times appointed for the payment thereof as aforesaid, *Then,* and in such case, and so often as the same shall so happen (although no formal or lawful demand thereof shall be made (*i*)), it shall be lawful for the said [*wife*] and her assigns, into and upon all and every of the manors and hereditaments, charged therewith as aforesaid, or into and upon any of them, or any part thereof, in the name of the whole to enter, and the same to have, hold, and enjoy, and the rents, issues, and profits thereof, and of every part thereof, to receive and take to and for her and their own use and benefit, until she or they shall be thereby, or therewith, or otherwise, fully paid and satisfied the said annual sum or yearly rent-charge, and all arrears thereof, and also so much of the said annuity or yearly rent-charge as shall grow due during such time as the said [*wife*], or her assigns, shall continue in possession of the said hereditaments and premises, after such entry as aforesaid; and also all such losses, costs, charges, damages, and expenses as shall be sustained or occasioned by reason of the non-payment of the said annual sum or yearly rent-charge, or any part thereof, at or on the days or times hereinbefore appointed for payment thereof (*k*). AND THIS INDENTURE FURTHER WITNESSETH, that, for the better securing the payment of the said annual sum to the said [*wife*] and her assigns, during

Appointment of power of entry for securing a jointure rent-charge.

Second testatum.

(*i*) *Vide ante*, p. 45.

(*k*) If the power does not authorize the creation of a term, the demise to the trustees must of course be omitted.

her life, in case she should survive the said [*husband*], *He* the said [*husband*], in pursuance of the power and authority to him in that behalf given or reserved in and by the said indenture of release, and by force and virtue thereof, and of every other power, right, and authority to him reserved, or in him vested, or in anywise enabling him in this behalf, by this present deed by him sealed and delivered in the presence of two credible witnesses, *doth* (subject, and without prejudice as aforesaid) grant, bargain, sell, limit, appoint, and demise unto the said [*two trustees*], their executors, administrators, and assigns, ALL and singular the manors, messuages, farms, lands, woods, tenements, and hereditaments, comprised in the said indentures of the —— and —— day of ——, and hereby charged with the said annual sum or yearly rent-charge of £—— as aforesaid, with their respective rights, members, and appurtenances: AND the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits, of the same premises. TO HAVE AND TO HOLD the said manors, messuages, &c., and all and singular other the premises hereby granted, limited, appointed, and demised, or intended so to be, with their and every of their rights, members, and appurtenances, unto the said [*two trustees*], their executors, administrators, and assigns, for and during, and unto the full end and term of five hundred years, to commence and be computed from the decease of the said [*husband*], and thence next ensuing, and fully to be complete and ended, without impeachment of or for any manner of waste: UPON TRUST *nevertheless*, in case the said annual sum, or any part thereof, should be behind and unpaid by the space of forty days next over or after either of the said days whereon the same is appointed to be paid as aforesaid, (although no formal or legal demand shall be made), *Then*, and so often as the same shall happen, that they the said [*two trustees*], or the survivor of them, his executors or administrators, shall and do, from time to time, by and out of the rents, issues, and profits of the said manors, &c., or by demising, leasing, selling, or mortgaging the said premises, or any part thereof, for all or any part of the same term; or by bringing actions against the tenants or occupiers of the same premises, or any of them, for the rents then in arrear; or by such other ways and means as to them or him shall seem meet, raise and levy such sum or sums of money as shall be sufficient from

1. JOINTURE.

Appointment by husband, in pursuance of the power,

(subject as aforesaid)

unto trustees.

Parcels comprised in settlement:

and the reversion, &c.

Habendum to trustees for 500 years from husband's death;

upon trust in case rent-charge should be in arrear forty days.

Trustees, out of the rents, &c.,

or by demising, &c.,

or by bringing actions against tenants for rents in arrear,

or by such other ways, &c.,

raise and levy sufficient mo-

1. JOINTURE.

ney to pay arrears of rent-charge; with all costs, &c.

time to time to pay and satisfy the said annual sum, or so much thereof as shall from time to time happen to be in arrear and unpaid: together with all costs, charges, damages, and expenses attending the levying and raising, or occasioned by the non-payment of the said annual sum, or any part thereof; and shall and do pay, apply, and dispose of the same monies so to be levied and raised, in or towards payment and satisfaction thereof accordingly. AND shall permit and suffer the person or persons to whom the next and immediate reversion or remainder, expectant upon the determination of the said term of five hundred years, of and in the premises therein comprised, shall for the time being belong, to receive the residue or surplus of the rents and profits which shall remain after, and not be applied in or towards the execution and performance of the trust of the said term of five hundred years. PROVIDED ALWAYS, that when the trusts hereinbefore declared of and concerning the said term of five hundred years, shall have been performed or satisfied, or shall have become unnecessary or incapable of taking effect, and the costs and charges of the trustees of the same term respectively, and their respective executors, administrators, and assigns, in and about the execution and performance of the said trusts shall have been fully paid or satisfied, *Then*, and immediately thenceforth, the said term of five hundred years of and in the premises hereby appointed or demised, or intended so to be, or of so much thereof as shall remain unsold and undisposed of for the purposes aforesaid, shall cease, determine, and be void. PROVIDED ALWAYS (*l*), that the grant, limitation, and appointment hereby made as aforesaid, or any clause, matter, or thing herein contained, shall not extend to prevent or hinder the said [*husband*], at any time or times hereafter, from granting, limiting, and appointing any further yearly rent-charge or yearly rent-charges to the use of the said [*wife*] and her assigns, during her life, if she should survive him, pursuant to and under the terms and restrictions expressed in the power of jointuring for that purpose reserved by the said indenture of release, or the power reserved by the said indenture of release bearing even date therewith. IN WITNESS &c.

And to permit the persons in remainder to receive the residue of the rents and profits.

Cesser of the term.

This appointment not to prevent any further appointment.

(*l*) Whenever the husband does not exercise his power to the full extent, it is prudent to add a similar proviso to the above.

2. APPOINTMENT *in Fee of Part of the Estates included in a Power, subject to the Estates for Life of the Appointor, and his Wife* (*a*).

2. IN FEE, SUBJECT TO ESTATES FOR LIFE.

TO ALL TO WHOM THESE PRESENTS SHALL COME, [*appointor*], of &c., *sendeth greeting*. WHEREAS (*Recite the deed creating the power*). AND WHEREAS the said [*appointor*] is desirous, and hath determined to exercise the said power of appointment in favour of [*appointee*], his eldest son, in order that the fee-simple of the messuage, &c., hereinafter particularly described, (being part of the messuages, &c. comprised in the said indenture of release), may be absolutely vested in the said [*appointee*], his heirs and assigns, for ever after, and subject to the several estates of the said [*appointor*] and [*wife*], his wife, for their respective lives, and the said estate of the trustees for supporting contingent remainders. NOW KNOW YE, AND THESE PRESENTS WITNESS, that for carrying the said determination into effect, and also by virtue and in exercise of the power and authority to the said [*appointee*], by the said indenture of release for this purpose given, limited, or reserved, as hereinbefore is mentioned, and of all other powers and authorities whatsoever enabling him in this behalf, *He* the said [*appointor*] *doth* by this deed or writing, by him (signed), sealed, and delivered in the presence of and attested by the two persons whose names are intended to be indorsed hereupon, as witnesses to the signing, sealing, and delivery of these presents by the said [*appointor*], irrevocably direct, limit, and appoint, that ALL THAT messuage, &c., situate &c., (being part of the hereditaments comprised in the said indenture of release, and thereby subjected to the appointment of the said [*appointor*], and every part and parcel of the same, with their appurtenances, shall henceforth go, remain, and be TO THE USE of the said [*appointee*], his heirs and assigns, for ever; *Subject nevertheless* and without prejudice to the several estates for life of the said

Recital of the deed creating the power.

Recital of desire and determination to exercise the power.

Testatum.

Appointment in pursuance of a power.

Parcels.

To the use of appointee in fee;

(*a*) [As to the requisite to a deed of appointment, *vide ante*, p. 470.]

2. IN FEE, SUBJECT TO ESTATES FOR LIFE.

[*appointor*] and [*wife*], his wife, respectively, of and in the same messuage, &c., hereby appointed. IN WITNESS whereof, he the said [*appointor*] has hereto set his hand and seal, the —— day of ——, 18— (*b*).

subject to the estates for life of appointor and his wife.

Testimonium.

Attestation.

SIGNED, SEALED, AND DELIVERED, in the presence of us, }

Stamp.

(*b*) Stamp, one pound fifteen shillings, 55 Geo. 3, c. 184.

3. OF A TRUST ESTATE IN A MOIETY TO ONE, AND OF OTHER MOIETY TO FIVE, IN FEE, WITH POWER OF REVOCATION.

3. APPOINTMENT *by a Widow, under a Power, of a* MOIETY *of a Moiety in an* EQUITABLE ESTATE *in Lands, to* ONE *Child in* FEE; *and of the* REMAINING MOIETY *of a Moiety to the other* FIVE *Children of the Marriage, as* TENANTS IN COMMON, *in* FEE; *subject to the Appointor's Life Estate; with a Power of general or partial* REVOCATION.

Recital of marriage settlement, being a grant of a moiety of a reversion in fee, expectant on an estate for life, with power for the wife to appoint same among the children of the marriage, subject to the parents' life estates.

TO ALL TO WHOM THESE PRESENTS SHALL COME, [*appointor*], of &c., widow, *sendeth greeting.* WHEREAS, by an indenture (*a*), bearing date &c., and made between [*husband*], then of &c., since deceased, of the first part; the said [*appointor*], (by her then name and addition of [*maiden name*], spinster), of the second part; and [*trustees*], of &c., of the third part, (being the settlement made previously to the marriage then intended to be and afterwards duly solemnized, between the said [*husband*] and the said [*appointor, maiden name*]); *All that* undivided one half-part or moiety of her the said [*appointor*], then [*maiden name*], of and in *All those* messuages, &c., was duly conveyed and assured (*subject* to the estate for life of [*tenant for life*], of &c., in the same hereditaments, which has long since determined by his death), *To the use* of the said [*appointor*], then [*maiden name*], her heirs and assigns, until the solemnization of the said then intended marriage: *And* after the solemnization

(*a*) A bargain and sale for a year was not adopted in the above instance, as a grant alone was always sufficient to convey remainders or reversions.

3. OF A TRUST ESTATE IN A MOIETY TO ONE, AND OF OTHER MOIETY TO FIVE IN FEE, WITH POWER OF REVOCATION.

thereof, and the decease of the said [*tenant for life*], *To the use* of the said [*trustees*], and the survivor of them, his heirs and assigns, *Upon trust*, to permit and suffer the said [*appointor*] and her assigns to receive and take the rents, issues, and profits thereof, for her life: *And* after her decease, *Upon trust*, to permit and suffer the said [*husband*] and his assigns (in case he should be then living), to have, hold, and enjoy the same, and receive and take the rents, issues, and profits thereof, during his life; *And* after the several deceases of them the said [*husband*] and [*appointor*], then *Upon trust* for, and to and for the only proper use of all and every the child and children of the body of the said [*husband*], on the body of the said [*appointor*] to be begotten, in such parts, shares, and proportions (*b*), as the said [*appointor*] should, notwithstanding her coverture, either by her last will and testament in writing, or by any deed or deeds, writing or writings, to be by her duly and legally executed in the presence of three or more credible witnesses, give, grant, convey, limit, declare, direct, or appoint the same: *And* in default of, and subject to such appointment *Upon other trusts* in the now reciting indenture mentioned. AND WHEREAS the said [*husband*] departed this life in or about the month of ——, in the year ——, leaving the said [*appointor*], his widow, and [*A. B.*], [*C. B.*], [*D. B.*] [*E. B.*], [*F. B.*], and [*G. B.*], their only children, and no other issue. AND WHEREAS the said [*appointor*] hath determined to exercise the power given or limited to her by the said indenture, by appointing the moiety in the same indenture comprised, of the said messuage or tenement, lands, and hereditaments, and the fee-simple and inheritance thereof, unto the said [*A. B.*], [*C. B.*], [*D. B.*], [*E. B.*], [*F. B.*], and [*G. B.*], their heirs and assigns, in the shares or proportions, and in the manner hereinafter mentioned. NOW, THEREFORE, KNOW YE, AND THESE PRESENTS WITNESS, that

Recital of husband's death, leaving appoint or his widow, and six children.

of desire to execute power in favour of children.

Testatum.

(*b*) Notwithstanding the omission in the above power of the usual words, "for such estate or estates," yet it seems clear that estates in fee may be appointed. *Daniel* v. *Upton*, Noy, 80; Latch. 9, 39, 134, *S. C.*: *Liefe* v. *Saltingstone*, 1 Mod. 189; 1 Freem. 149, 163, 176; 2 Lev. 104; Carter, 232, *S. C.*: *Spring* d. *Titcher* v. *Biles*, 1 T. R. 435, n.: *Tomlinson* v. *Dighton*, 1 P. Wms. 149; 1 Salk. 239; Com. 194; 2 Eq. Cas. Abr. 309, pl. 13. But it would be clearer, if the words "manner and form" were added. *Rex* v. *The Marquis of Stafford*, 7 East, 521.

Although the words "for such estate or estates," be omitted in the power, yet it seems a fee may be appointed.

3. OF A TRUST ESTATE IN A MOIETY TO ONE, AND OF THEIR MOIETY TO FIVE, IN FEE, WITH POWER OF REVOCATION.

for carrying the said determination into effect, *She* the said [*appointor*], pursuant to, and by force and virtue, and in exercise (*c*) and execution of the power and authority given, limited, or reserved to her by the said indenture of settlement, and of every other power or authority whatsoever in anywise enabling her in this behalf, *doth* by this deed or writing, duly and legally executed (*d*) by her, in the presence of the three credible persons whose names are hereupon indorsed as witnesses attesting her execution of these presents, grant, limit, declare, direct, and appoint, *That* ONE undivided moiety, or equal half-part or share, [the whole into two equal parts or shares being considered as divided], of and in the said moiety in the said indenture comprised, of the messuages or tenements, lands, hereditaments, and premises described or mentioned in the said indenture, with their and every of their rights, members, and appurtenances shall henceforth remain, continue, and be, *And* that the trustees or trustee of the said indenture of settlement, and his or their heirs, shall henceforth stand and be seised or possessed of the same (*subject* nevertheless, and without prejudice to the life estate or interest of her the said [*appointor*] therein), UPON TRUST for the said [*G. B.*], her heirs and assigns, for ever. AND THAT THE OTHER remaining moiety, half part, or share, of and in the moiety in the said indenture comprised, of the messuages or tenements, lands, hereditaments, and premises hereinbefore mentioned, with their and every of their rights, members, and appurtenances, shall henceforth remain, continue, and be, *And* that the said trustees or trustee of the said indenture of settlement, and his or their heirs, shall henceforth stand and be seised or possessed of the same (*subject* nevertheless, and without prejudice to the estate or interest for life of the said [*appointor*] therein), UPON TRUST for the said [*A. B.*], [*C. B.*], [*D. B.*], [*E. B.*], and [*F. B.*], in equal shares and proportions, as tenants in common, and for their several and respective heirs and assigns for ever. PROVIDED ALWAYS, that it shall be lawful to and for the said [*appointor*], and she hereby reserves to herself full power and authority, by (*e*) any deed

Appointment of a moiety of a moiety in a trust estate in lands to one child in fee, subject to the appointor's life estate.

Appointment of remaining moiety to five children, in common, in fee, subject to the appointor's life estate.

(*c*) *Vide ante*, p. 500.

(*d*) In the operative part of an appointment under a power, the words of the power should be followed as nearly as possible.

(*e*) *Vide ante*, p. 495.

or deeds, instrument or instruments in writing, to be sealed and delivered by her in the presence of three or more credible witnesses, and to be attested by the same witnesses, or by her last will and testament (*g*), absolutely to revoke, determine, and make void the gifts, grants, limitations, declarations, directions and appointments, trusts and estates hereinbefore expressed, declared, and contained, as to the whole or any part of the hereditaments and premises hereby limited and appointed, *So* and in such manner that the hereditaments and premises, to which such revocation shall extend, may stand settled and limited in the same manner, and subject to the same power of appointment, as if these presents had not been made and executed; any thing hereinbefore contained to the contrary notwithstanding. IN WITNESS &c. (*ut ante*, p. 514).

3. OF A TRUST ESTATE IN A MOIETY TO ONE, AND OF OTHER MOIETY TO FIVE, IN FEE, WITH POWER OF REVOCATION.

Power of general or partial revocation.

SIGNED, SEALED, AND DELIVERED (*h*), by the above (*or* within) named [*appointor*], in the presence of us,

(*g*) *Vide ante*, p. 484.

(*h*) *Vide ante*, p. 479.

4. APPOINTMENT *by a Widow, under an exclusive Power in a Surrender of* COPYHOLDS *of Inheritance,* TO FIVE *younger Children,* in FEE, *as Tenants in Common, according to the Custom of the Manor; with* VARIATIONS *adapted to the Circumstances of a similar* PREVIOUS APPOINTMENT *having been made* TO THREE *of them, and by their Consent a new Appointment made to the Five.*

4. OF COPYHOLDS TO FIVE, IN FEE.

THIS INDENTURE, made &c., BETWEEN [*appointor*], late of &c., but now of &c., widow, of the one part; and [*A. B.*], [*C. B.*], and [*D. B.*], all of &c., spinsters; [*H. K.*], of &c., gentleman, and [*E.*] his wife, and [*F. B.*], of &c., esquire, which [*A. B.*], [*C. B.*], spinster, [*D. B.*], [*E. K.*], and [*F. B.*], are the five younger children of the said [*C. B.*,

Parties, appointor, and her five younger children.

4. OF COPYHOLDS TO FIVE, IN FEE.

appointor], widow, by [*husband*], esquire, her deceased husband, of the other part. WHEREAS the said [*husband*] being seised to him and his heirs of certain copyhold hereditaments, held of the manor of ——, in the county of ——, did on or about the —— day of ——, in contemplation of his then intended marriage with the said [*appointor*], then [*maiden name*], surrender into the hands of the lord of the said manor of ——, *All those* messuages, &c., being part of the copyhold hereditaments of which he was so seised as aforesaid, *To the use* of himself the said [*husband*] and his assigns, for his life; remainder *To the use* of [*appointor*] the mother, then [*maiden name*], spinster, for her life, for her jointure, and in bar of dower; remainder *To the use* of such child or children of the body of the said [*husband*] on the body of the said [*appointor*], the mother, to be begotten, or of the issue of any such child or children, and for such estate and estates, and with such limitations and remainders over, and under and subject to such provisoes, restrictions, and payments, to and amongst and for the benefit of all and every or any such child or children, or their or any of their issue, and in such shares, manner, and proportions, as they the said [*husband*] and [*appointor*] the mother, during their joint lives, by any deed or writing under their hands and seals, to be by them executed in the presence of, and attested by two or more credible witnesses, and inrolled in the court-rolls of the said manor (*a*), at one of the three next general courts to be holden for the same manor, after the decease of either of them the said [*husband*] or [*appointor*] his wife, should direct, nominate, or appoint: *And* for want of such direction, nomination, or appointment, or in default of the inrolment thereof as aforesaid, then to remain *To the use and behoof* of such child or children of the said intended marriage, or of their issue as aforesaid, and for such estate and estates, and with such limitations and remainders over, and under and subject to such provisoes, restrictions, and payments, to and amongst and for the benefit of all and every or any of such child or children, or any of their issue,

Recital of surrender of copyholds of inheritance by deceased husband,

to the use of himself for life;

remainder to the use of appointor for life, in bar of dower;

remainder to the use of such child or children of the marriage, or the issue of any such child or children, as husband and wife should appoint;

and in default,

to the use of such child, &c. as the survivor should appoint by deed or will.

(*a*) The inrolment of the appointment in the court-rolls of the manor should always be made requisite to a valid execution of a power over copyholds; for the title to copyhold lands should always appear on the court-rolls, and not be dependent on any private deeds or agreements. *Vide ante*, p. 200.

A power over copyholds should always require the appointment to be inrolled in the court-rolls.

4. OF COPYHOLDS TO FIVE, IN FEE.

and in such shares, manner, and proportions, as the survivor of them the said [*husband*] and [*appointor*] the mother, by any deed or writing, or by his or her last will and testament in writing, under his or her hand and seal, to be executed and attested as aforesaid, and inrolled at one of the three next general courts to be holden for the said manor, after the decease of such survivor, should direct, nominate, or appoint: *And* for want of such direction, nomination, or appointment, or in default of the inrolment thereof as aforesaid, then to remain *To the use and behoof* of all and every the child and children of the said [*husband*] on the body of the said [*appointor*], the mother, to be begotten, and his, her, and their heirs, and if more than one, as tenants in common, according to the custom of the said manor: *And* in case there should be no child or children of the said intended marriage, or, there being such, all and every the said child or children should die under the age of twenty-one years, and without issue, then to remain to the heirs of him the said [*husband*], according to the custom of the said manor. AND WHEREAS the said [*husband*] departed this life on or about the —— day of ——, leaving the said [*appointor*], the mother, his widow, and six children of his marriage with her; *And* no appointment was made or executed during the lifetime of the said [*husband*], under the said power of appointment. AND WHEREAS all the said children have attained their respective ages of twenty-one years. AND WHEREAS [*eldest son*], the eldest son of the said marriage, is in a state of mental imbecility; and the said [*appointor*], the mother, intends to make that provision for her said eldest son, which she deems best adapted to the circumstances of his being in that state. AND WHEREAS the said [*appointor*], the mother, hath determined to exercise the power given or limited to her by the hereinbefore in part recited surrender, by appointing the copyhold hereditaments therein comprised under the said [*five younger children*], their heirs and assigns, for ever, as tenants in common, according to the custom of the said manor (*b*). NOW THIS INDEN-

And in default, to the use of the children in fee, in common; and in default of issue, to the heirs of husband.

Recital of husband's death, leaving appointor his widow, and six children of the marriage;

and that no joint appointment was made;

that all the children are of age;

that eldest son is imbicile, and that appointor intends to make a provision for him adapted to that state;

desire to execute power in favour of five younger children;

Testatum.

(*b*) If there has been a previous appointment to three, omit the last recital, and add,

PREVIOUS APPOINTMENT.

"AND WHEREAS by a deed-poll or instrument in writing, under the hand and seal of the said [*appointor*], duly exe-

Recital of a previous appointment by

4. OF COPYHOLDS TO FIVE, IN FEE.

TURE WITNESSETH, that by virtue and in exercise and execution of the power or authority, powers and authorities, given, limited, or reserved to the said [*appointor*], the mother, by virtue or means of the hereinbefore recited surrender, and in exercise and execution of all and every other power or powers, authority or authorities, enabling her in that behalf, *She* the said [*appointor*], the mother, by this deed or instrument in writing, signed, sealed, and delivered, or executed by her in the presence of two credible witnesses, and to be attested by the same witnesses (*c*), *doth* direct, nominate, and appoint, that immediately after the execution of these presents, (*subject* nevertheless, and without prejudice, to the estate for life of the said [*appointor*], the mother, therein),

Appointment

(subject to appointor's life estate), of

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cuted and attested, and bearing date &c., the said [*appointor*], the mother, *did*, in exercise of the power reserved to her in and by the said surrender, appoint that the said copyhold hereditaments should thenceforth be and enure *To the use* of her said three children [*A.*], [*C.*], and [*D.*], exclusively, their heirs and assigns, for ever. AND WHEREAS, at the instance and request of the said five younger children, and with the consent of the said [*A. B.*], [*C. B.*], the daughter, and [*D. B.*], as such former appointees, the said [*appointor*], the mother, hath consented to make the further appointment contained in these presents: AND the said [*A. B.*], [*C. B.*], the daughter, and [*D. B.*], *have* consented, and *do* hereby consent, that the appointment hereby made shall be a valid and effectual appointment as against them in equity, and also, so far as circumstances and the said form of appointment will admit, at law*."

appointor to three of the children exclusively in fee;

that with the consent of the former appointees, appointor hath consented to make this appointment.

Consent of former appointees, that this appointment shall be valid.

(*c*) If there has been a previous appointment, add,

"and with the consent and approbation of the said [*A. B.*], [*C. B.*], the daughter, and [*D. B.*], testified by their severally executing these presents."

With the consent of former appointees.

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* As inrolment of the appointment in the copyhold court, after the death of the appointor, is requisite to a valid execution of the above-recited power, if, by the agreement of the first appointees, only the second appointment be inrolled, it seems, that the second appointment will have the same effect as if a previous appointment had not been made. See *Digges' case*, 1 Co. 173 b. 3. [*Vide ante*, p. 479.]

As to inrolment.

4. OF COPYHOLDS TO FIVE, IN FEE.

ALL and singular the copyhold of customary messuages, lands, tenements, and hereditaments, comprised in the said surrender, and described in the recitals hereinbefore contained, and every part and parcel of the same, with the rights, members, and appurtenances, shall belong and remain to, and TO THE PROPER USE AND BEHOOF of the said [*A. B.*], [*C. B.*], the daughter, and [*D. B.*], [*E. K.*], and [*F. B.*], their heirs and assigns, for ever, as tenants in common, according to the custom of the said manor. IN WITNESS &c.

parcels comprised in surrender,

to the use of the five younger children in fee, as tenants in common, according to the custom.

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5. OF LEASEHOLD FOR YEARS TO CHILDREN, IN UNEQUAL SHARES; AND ASSIGNMENT OF TERM TO NEW TRUSTEES.

5. APPOINTMENT *of* LEASEHOLDS FOR YEARS *by Husband and Wife, under a Power in a Marriage Settlement, to the Three Children of the Marriage, to take effect after the Death of the Survivor of the Parents,* IN UNEQUAL SHARES, *and* ASSIGNMENT *of the Term, by the Administratrix, with the Will annexed, of the surviving Trustee and her Husband to Two* NEW TRUSTEES.

THIS INDENTURE, made &c., BETWEEN [*assignor, husband of administratrix of surviving trustee*] and [*wife*], his wife, formerly [*maiden name*], spinster, of the first part; [*husband, joint appointor*], and [*wife*], his wife, (whose maiden name was [*maiden name*], daughter of [*father*], late of &c., esquire, deceased), of the second part; and [*two new trustees*], of &c., of the third part. WHEREAS by indenture of lease, bearing date on or about &c., and made between [*mortgagee*], esquire, of the first part; [*mortgagor*], of the second part; and [*lessee*], of the third part; for the considerations therein mentioned, the said [*mortgagee*] *did*, with the consent of the said [*mortgagor*], demise unto the said [*lessee*], *All that* piece or parcel of ground, &c., *To hold* the same unto the said [*lessee*], his executors, administrators, and assigns, from —— then last past, during the term of —— years, *At* the yearly rent of £7; *And subject* to the several covenants and conditions therein expressed and contained on the part of the lessee, his executors, administrators, and assigns. AND WHEREAS by divers mesne assignments, and other acts in the law, and ultimately by indenture, bearing date on or

Parties.

Recital of lease of lands appointed.

Recital, that by divers mesne assignments, the lands were

5. OF LEASEHOLD FOR YEARS TO CHILDREN, IN UNEQUAL SHARES; AND ASSIGNMENT OF TERM TO NEW TRUSTEES.

about &c., and made between the said [*father*], deceased, of the first part; the said [*husband*] and [*wife*], his wife, of the second part; and [*trustees*], of the third part, (being a settlement executed subsequently to the marriage of the said [*husband*] and [*wife*], his wife); *The said* piece or parcel of ground, &c., comprised in the said indenture of lease, were duly assigned to, and became vested in the said [*trustees*], their executors, administrators, and assigns, for the then residue of the said term of —— years therein, *In trust* for the separate use of the said [*wife*], during the residue of the said term, if she should so long live: *And* after the decease of the said [*wife*], *In trust* for the said [*husband*], during the residue of the said term, if he should so long live: *And* after the death of the survivor of the said [*husband*] and [*wife*] his wife, *In trust* for all and every the children whether sons or daughters of the said [*husband*] on the body of the said [*wife*] his wife begotten or to be begotten, whether born in his lifetime, or in due time after his decease, at such time and times, and in such parts, shares, and proportions, and subject to such conditions, restrictions, and limitations, as the said [*husband*] and [*wife*] his wife, or the survivor of them, by any deed or deeds, with or without power of revocation, to be sealed and delivered by them in the presence of two or more credible witnesses, or by the last will and testament of such survivor, should give, direct, limit, or appoint; *And* for want of such appointment, *In trust* for all the children of the said marriage equally, in manner therein mentioned. AND WHEREAS the said [*two old trustees*] having both departed this life, by deed-poll sealed and delivered by the said [*husband*] and [*wife*], his wife, in the presence of two credible witnesses, bearing date on or about &c., and indorsed on the said indenture of the —— day of ——, the said [*husband*] and [*wife*], his wife, by virtue, and in pursuance and exercise of a power for that purpose to them reserved and given by the above-recited indenture of the —— day of ——, 18—, and of all other powers enbleing them thereto, did nominate, substitute, and appoint the said [*new trustees*] to be trustees for the purposes in the same indenture expressed, in the stead of the said [*old trustees*], to do and perform all acts concerning the said trust premises. AND WHEREAS the said [*old trustee*] survived the said [*other old trustee*], and afterwards departed this life, having duly made and published his last

vested in trustees of the marriage settlement containing the power to appoint,

in trust for the wife for life, for her separate use;

remainder in trust for the husband for life;

remainder in trust for all the children, in such shares as husband and wife, or the survivor, shall appoint;

and for want of appointment, in trust for all the children equally.

Recital of appointment of new trustees.

Recital of representation to the last trustee.

5. OF LEASEHOLD FOR YEARS TO CHILDREN, IN UNEQUAL SHARES; AND ASSIGNMENT OF TERM TO NEW TRUSTEES.

will and testament in writing, bearing date on or about the —— day of ——; but did not thereby appoint any person or persons executor or executors thereof: AND on or about the —— day of —— then next, administration with the will of the said [*surviving trustee*] annexed, was duly granted to the said [*wife of assignor, married name*], then [*maiden name*] (one of the daughters of the said [*surviving trustee*]), by the Prerogative Court of the Archbishop of Canterbury. AND WHEREAS there is issue of the said [*husband*] by the said [*wife*], his wife, three children, and no more, that is to say; [*first daughter*], the wife of [A. B.], of &c.; [*second daughter*], the wife of [C. D.], of &c., and [*son*], which [*first daughter, married name*] and [*second daughter, married name*], have respectively attained the age of twenty-one years; but the said [*son*] is now an infant of the age of nineteen years, or thereabouts. AND there being now no probability of the said [*wife, married name*] having any other issue by the said [*husband*], they the said [*husband*] and [*wife*], his wife, are desirous to appoint the said hereditaments and premises, comprised in the said indenture of lease, unto and among the said [*first daughter, married name*], [*second daughter, married name*], and [*son*], in the several shares and proportions, and in the manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that they, the said [*husband*] and [*wife*] his wife, in pursuance, and in exercise and execution of the power (*a*) or authority given or reserved to them in and by the said indenture of the —— day of ——, and by force and virtue thereof, and of every other power, right, and authority to them or either of them given or reserved, or in them or either of them vested or in anywise enabling them or either of them in this behalf, by this deed, sealed and delivered by them in the presence of two credible witnesses, *do*, and each of them *doth*, irrevocably direct, limit, and appoint, *That* the piece or parcel of ground, &c., and all and singular other the premises hereinbefore described, and comprised in the said indenture of lease, of the —— day of ——, with their and every of their appurtenances, shall from and immediately after the decease of the survivor of the said [*husband*] and [*wife*], his wife, remain, continue,

Recital of there being three children of the marriage;

and there being no probability of more, parents are desirous to appoint.

Testatum.

Appointment of leasehold lands.

to take effect after the death of the survivor of parents,

(*a*) As to the requisites to a well-drawn appointment under a power, and the attestation of it, *vide ante*, p. 470.

5. OF LEASEHOLD FOR YEARS TO CHILDREN, IN UNEQUAL SHARES; AND ASSIGNMENT OF TERM TO NEW TRUSTEES.

and be, during all the residue and remainder which shall from and after the decease of the survivor of the said [*husband*] and [*wife*], his wife, be to come and unexpired of the said term of —— years, unto and among the said [*first daughter*], [*second daughter*], and [*son*], in the shares and proportions following, that is to say; *As to, for, and concerning* one full undivided twentieth (*b*) part or share, of and in the said piece or parcel of ground, &c., with the appurtenances, unto and for the use and benefit of the said [*first daughter*], her executors, administrators, and assigns. *And as to, for, and concerning* one other full undivided twentieth part or share, of and in the said piece or parcel of ground, &c., with the appurtenances, unto and for the benefit of the said [*son*], his executors, administrators, and assigns; and to be an interest vested in him, at his age of twenty-one years: *But* in case the said [*son*] should depart this life under the age of twenty-one years, then immediately after such his decease, to and for the benefit of the said [*second daughter*], her executors, administrators, and assigns. *And as to, for, and concerning* the other or remaining eighteen undivided twentieth parts of and in the said piece or parcel of ground, &c., with the appurtenances, unto and for the benefit of the said [*second daughter*], her executors, administrators, and assigns. AND THIS INDENTURE FURTHER WITNESSETH, that in order that the legal estate of and in the said leasehold premises may be vested, for the residue of the said term of —— years therein, in the said [*two new trustees*], the trustees appointed by the said deed-poll, of the —— day of ——, as aforesaid, upon the trusts affecting the same, by virtue of the said indenture of the —— day of ——, and by virtue of these presents; *And* in consideration of the sum of ten shillings to the said [*assignor*], and [*wife*], his wife, already paid by the said [*two trustees*]; *They* the said [*assignor*], and [*wife*], his wife, at the request, and by the direction of the said [*husband*], and [*wife*], his wife, (testified by their seve-

for the then residue of the term,

in the following shares, viz. one-twentieth to one child, one-twentieth to another child, to vest on his coming of age;

but in case of his previous decease, then to the other child;

and the remaining eighteen-twentieths to the other child.

Further testatum.

(*b*) [The original draft was intended to be as far as possible for the benefit of one of the three objects of the power to the exclusion of the rest; and it was considered that the appointment, a twentieth share to each of the others, would not be held illusory. But now an appointment of any share, however small, would satisfy the power. *Ante*, p. 501.]

5. OF LEASEHOLD FOR YEARS TO CHILDREN, IN UNEQUAL SHARES; AND ASSIGNMENT OF TERM TO NEW TRUSTEES.

rally sealing and delivering these presents), by these presents *do*, and each of them *doth*, bargain, sell, assign, transfer, and set over, unto the said [*new trustees*], their executors, administrators, and assigns, ALL THAT the said piece or parcel of ground, &c., and all and singular other the premises hereinbefore described, and which in and by the said indenture of the —— day of —— were assigned, or expressed to be assigned, unto the said [*old trustees*], their executors, administrators, and assigns, with their and every of their rights, members, and appurtenances. AND all the estate, right, title, interest, term, and terms for years yet to come and unexpired, property, possession, benefit, claim, and demand whatsoever, of them the said [*assignor*], and [*wife*] his wife, or either of them, in, to, or out of the said piece or parcel of ground, &c., and every part thereof. TO HAVE AND TO HOLD the said piece or parcel of ground, &c., and all and singular other the premises hereinbefore expressed to be hereby assigned, with their appurtenances, unto the said [*new trustees*], their executors, administrators, and assigns, henceforth, for and during all the residue and remainder now to come and unexpired of the said term of —— years, *But subject* to the payment of the rent, and observance and performance of the several covenants and conditions in and by the said indenture of lease of the —— day of ——, reserved, mentioned, and contained, on the part of the lessee therein named, his executors, administrators, and assigns, to be paid, observed, kept, and performed. AND *it is hereby agreed and declared*, that the said [*new trustees*], their executors, administrators, and assigns, shall henceforth stand and be possessed of the said piece or parcel of ground, &c., and all and singular other the premises hereinbefore described, and intended to be hereby assigned, with their appurtenances, *Upon* and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, and declarations, as the same premises are now subject to, under or by virtue of the said indenture of the —— day of ——, and of these presents. AND THE SAID [*assignor*] doth hereby, for himself, his heirs, executors, and administrators, covenant with the said [*new trustees*], their executors, administrators, and assigns, that they the said [*assignor*] and [*wife*], his wife, have not nor hath either of them, at any time heretofore, made, done, executed, committed, or willingly or knowingly permitted

Assignment by the representative of a surviving trustee to two new trustees.

Parcels.

All the estate.

Habendum for residue of term.

subject to the rent and covenants of lease.

Declaration that trustees shall be possessed of premises upon the trusts of the settlement.

Covenant by husband, that he and wife have not incumbered.

5. OF LEASEHOLD FOR YEARS TO CHILDREN, IN UNEQUAL SHARES; AND ASSIGNMENT OF TERM TO NEW TRUSTEES.

or suffered any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof, the piece or parcel of ground, &c., and premises expressed to be hereby assigned, or any part thereof, or the said term of —— years therein, are, is, can, shall, or may be impeached, charged, assigned, surrendered, or in anywise incumbered. IN WITNESS &c.

The very learned gentleman who drew the above deed, made on it the following observations, caused by the doubts and difficulties in which the doctrine of illusory appointments was then involved. *Vide ante*, p. 500.

Observations of an eminent conveyancing counsel on the subject of illusory appointment.

"If Mr. G. has advanced Mrs. K. and his son J., then the smallness of the share of the leasehold estate, to be appointed to Mrs. K. and Mr. J. G. will not vitiate the appointment; but if they have not been substantially advanced, then the shares now to be appointed must not be illusory. What proportion of the trust fund would amount to an illusory share, it is difficult to determine. In the case of *Bax* v. *Whitehead*, 10 Ves. 31, the Master of the Rolls held, that one twenty-fifth part of a trust fund was not an illusory share; but upon an appeal, 16 Ves. 15, the Lord Chancellor seems to have disapproved of his Honor's determination in former cases; the principle of which determination seems to have been, to ascertain some precise proportion which might be considered as the standard of an illusory share."

"23rd November, 1810."

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6. BY TWO, ON A CONTINGENCY, TO SUCH USES AS ONE SHALL APPOINT.

6. APPOINTMENT *by a Father and Son, where Lands were limited to such Uses as they should jointly appoint, with Remainders over; that, in case of the Son's Death, and a Failure of his Issue Male in the Father's Lifetime, the Lands shall (subject to any joint Appointment made or to be made by them) be, from the Son's Death and Failure of his Issue Male,* TO SUCH USES *as the Father surviving the Son shall* APPOINT (*a*).

Exordium.

TO ALL TO WHOM THESE PRESENTS SHALL COME, The Most Noble G., Marquis of P. and Earl of H., in the king-

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A person having a power to appoint to uses may appoint to such uses as

(*a*) On a point similar to the above, Mr. Sugden well observes, "In a preceding page I put the case of an estate being conveyed to such uses as A. shall appoint, and of his desire to convey the estate as B. shall appoint. Perhaps there is no conveyancer to whom, in the early part

dom of Ireland, Knight of the most noble Order of the Garter, and the Right Honourable C. K., commonly called Earl of B., eldest son of the said G., Marquis of P., *send greeting*. WHEREAS (*b*) by virtue of an indenture of bargain and sale, bearing date on or about the —— day of ——, and expressed to be made between [A. B.] and [C. D.], of the first part; the said G., Marquis of P., of the second part; the said Earl of B., of the third part; [*tenant*], of &c., of the fourth part; and [*demandant*], of &c., of the fifth part; and inrolled in the High Court of Chancery; and a common recovery suffered in the Court of Common Pleas at Westminster, in —— Term, in the —— year of the reign of King George the Fourth, wherein the said [*demandant*] was demandant, the said [*tenant*] tenant, and the said Earl of B. first vouchee, *All those*, &c. were (*subject* to certain charges mentioned in the same indenture of bargain and sale) limited and assured *To the use* of the said G., Marquis of P., and his assigns, for life; with remainder *To the use* of such person and persons, and for such estate and estates, in

6. BY TWO, ON A CONTINGENCY, TO SUCH USES AS ONE SHALL APPOINT.

Recital of bargain and sale inrolled, and recovery, whereby lands were limited,

To the use of the father for life;

remainder to

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of his professional life, a doubt has not presented itself in regard to the validity of such an appointment. Two objections have been made to it, which have come within my observation: the one, that it is contrary to a known principle, that a power cannot be delegated; and the other, that it is a new attempt at a perpetuity. But these objections are easily answered. As to the first, the rule that a power cannot be delegated, is not a general inflexible rule, but is simply a regulation, that a *confidence* reposed in one, cannot by him be delegated to another. This rule, therefore, is inapplicable to the case before us; for no *confidence* was reposed in A., but the estate was, merely for his own convenience, conveyed to such uses generally as he should appoint. In regard to the second objection, the limitation has no greater tendency to a perpetuity than a simple conveyance in fee. Under the power in question the donee may tie up the estate for exactly the same period, but not longer, than he could were he seised in fee." Sug. Pow. 199, 3rd Ed.

another person shall appoint, which uses will take effect out of the original seisin.

(*b*) [If the estate was limited by a disentailing assurance under the stat. 3 & 4 Will. 4, c. 74, say,

Disentailing assurance.

"by virtue of indentures of lease and release bearing date respectively the —— day &c., the release being expressed to be made between &c., and duly inrolled in the High Court of Chancery."

And throughout the draft refer to the deeds, as,

"the said indentures of lease and release of the —— and —— days of ——."]

6. BY TWO, ON A CONTINGENCY, TO SUCH USES AS ONE SHALL APPOINT.

terest and interests, and subject to such annuities and charges, either annual or in gross, and such powers, conditions, and limitations over, and in such manner and form, either absolutely or conditionally, and with or without power of revocation and new limitation of use or uses, as they the said G., Marquis of P., and Earl of B., during their joint lives should, by any deed or deeds, writing or writings, to be by them both sealed and delivered in the presence of two or more credible witnesses, from time to time jointly direct, limit, appoint or declare: *And* in default of such direction, limitation, or appointment, and as to such part and parts of the said hereditaments and premises, and of such estate or interest therein as should not pass by any such joint direction, limitation, or appointment, or should not remain subject thereto, then as the said Earl of B., in case he should survive the said G., Marquis of P., should after the decease of said G., Marquis of P., by deed or will appoint: *And* in default of such direction, limitation, or appointment, and in the meantime subject thereto, *To the use* of the said Earl of B., and the heirs male of his body; remainder *To the use* of the Honourable F. K., commonly called Lord F. K., younger son of said G., Marquis of P., and the heirs male of his body; remainder *To the use* of the said Marquis of P. and Earl of B., their heirs and assigns, for ever. AND WHEREAS the said Marquis of P. hath requested the said Earl of B. to join in appointing the said manor, hereditaments, and premises comprised in the said indenture of bargain and sale of the —— day of ——, and the said common recovery, so that, in case the said Earl of B. should depart this life without leaving issue male, or leaving issue male, and such issue should fail during the lifetime of him the said Marquis of P., he the said Marquis of P. may be enabled to dispose of or settle the said manor, hereditaments, and premises, in such manner as he shall think fit, subject to such appointment or appointments as have been or may be made thereof by the said Marquis of P. and Earl of B. jointly, during their joint lives, whereto the said Earl of B. hath consented and agreed. NOW THESE PRESENTS WITNESS, that in pursuance of the said agreement, and for effectuating the purposes aforesaid, *The* said Marquis of P. and Earl of B., in pursuance and in exercise of the power and authority them enabling, in such manner as in the said indenture of bargain and sale is mentioned,

such uses as father and son should jointly appoint;

and in default, as the son should, by deed or will, appoint;

and in default, to the use of the son in tail male;

remainder to the use of his brother in tail male;

remainder to the use of the father and son in fee.

Recital of father's request, that son would join in appointing the lands.

Testatum.

Appointment of father and son,

6. BY TWO, ON A CONTINGENCY, TO SUCH USES AS ONE SHALL APPOINT.

and by virtue of all and every other the power and powers, authority and authorities, to them belonging or appertaining, or them enabling in this behalf, by these presents, by them sealed and delivered in the presence of the two credible persons, whose names are intended to be hereupon indorsed as witnesses attesting the execution thereof, *do*, and each of them *doth*, direct, limit, appoint, and declare, *That* in case the said Earl of B. should depart this life without issue male, or leaving issue male and such issue should fail during the lifetime of the said Marquis of P., ALL and singular the manor or lordship, advowsons, messuages, cottages, mills, farms, lands, tenements, tithes, rents, hereditaments, and premises comprised in the said indenture of bargain and sale, and common recovery, shall (*subject* to any appointment or appointments which hath or have been, or may hereafter be made thereof, or any part thereof, by the said Marquis of P. and Earl of B. under and by virtue of the power to them for that purpose given by the said indenture of bargain and sale of the —— day of ——) go, remain, continue, and be: *And* that the same indenture of bargain and sale, and the said common recovery, and all other conveyances and assurances thereof, shall be and enure; *And* that the recoveror, in the said recovery named, and his heirs, shall stand and be seised of the same manor, hereditaments, and premises, from and after the decease of the said Earl of B., and failure of his issue male, in the lifetime of the said G., Marquis of P., TO THE USE of such person and persons, and for such estate and estates, or for such intents and purposes, and with, under, and subject to such powers, provisoes, limitations, and conditions, and charged and chargeable with such sum and sums of money, either annual or in gross, as the said G., Marquis of P., surviving the said Earl of B., shall from time to time, by any deed or deeds, writing or writings, to be by him sealed and delivered in the presence of, and attested by two or more credible witnesses, and with or without power of revocation, limit, direct, or appoint; *And* that in default of, and in the meantime, and until such direction, limitation, or appointment, and in case any such should be made, when and as the estates thereby to be limited shall respectively end and determine, and as to such parts of the said premises of which there shall be no such direction, limitation, or appointment, To such and the same uses, upon such and the

that in case of son's death, and a failure of his issue male in father's lifetime,

parcels

shall (subject to any joint appointment) be,

from son's death, and failure of his issue male,

to such uses as father, surviving son, shall by deed appoint:

and in default of such appointment,

to the uses de-

6. BY TWO, ON A CONTINGENCY, TO SUCH USES AS ONE SHALL APPOINT.

same trusts, and for such and the same intents and purposes, as are mentioned, expressed, and declared of and concerning the said manor, hereditament, and premises, in and by the said indenture of bargain and sale. IN WITNESS whereof, they the said G., Marquis of P., and Earl of B., have hereunto set their hands and seals the —— day of ——, &c. (*attestation, ut ante*, p. 514).

clared in the bargain and sale.

Testimonium.

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7. AND AUTHORITY TO TRUSTEE TO RAISE PORTION.

7. APPOINTMENT *by a Father of a Portion for a Daughter, under a Power in his Marriage Settlement, where there has or has not been a previous Appointment, with an* AUTHORITY *to the surviving Trustee of the Term,* TO RAISE THE PORTION *by Mortgage forthwith: and* PROVISO *that the Appointment is not to prevent a further Appointment being made to the Daughter: or to preclude her from taking any share of the Residue, save only, that she shall not, unless by Appointment, take more than with the sum appointed she would have been entitled to if no Appointment had been made: adapted to the Circumstances of the Sum appointed being either smaller or greater than the distributive Share in Default of Appointment; and either where there is or is not an Infant who might not gain a vested Interest in the distributive Share in Default of Appointment.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, [*appointor*], of &c., esquire, *sendeth greeting*. WHEREAS by indentures of lease and release bearing date respectively on or about &c., the release being expressed to be made between the said [*appointor*], of the first part; [*intended wife*], of &c., spinster, of the second part; [*releasees*], of the third part; and [*trustee in term*], since deceased, and *other trustee of term*], of the fourth part (being the settlement made previously to, and in contemplation of the marriage then intended, and soon afterwards had, between the said [*appointor*] and [*wife, maiden name*]; *The* manor of, &c., in the said county of ——, with divers messuages, &c., in the said county of ——, therein particularly described, with their

Recital of the marriage settlement of the appointor, whereby

lands were limited,

appurtenances, were duly conveyed, settled, and assured, from and after the solemnization of the said then intended marriage, *To the use* of the said [*appointor*], and his assigns, for his life, with remainder *To the use* of the said [*releasees*], and their heirs, during the life of the said [*appointor*], *Upon trust* to preserve the contingent uses thereinafter limited; with remainder *To the use* and intent, that the said [*wife, maiden name*], might, after the decease of the said [*appointor*], (in case she should survive him), receive and take, during her life, out of the said manor and other hereditaments, one clear yearly rent-charge or sum of £——, for her jointure, with the usual powers and remedies for recovering the same; and subject thereto, *To the use* of the said [*trustees of term*], their executors, administrators, and assigns, for the term of two hundred years, *Upon the trusts* therein and hereinafter mentioned; with remainder *To the use* of the first and other sons of the said [*appointor*], by the said [*wife, maiden name*], successively, in tail male; with remainder *To the use* of the said [*appointor*], his heirs and assigns, for ever. And *it was thereby declared and agreed*, that the said term of two hundred years was limited to the said [*trustees of term*], their executors, administrators, and assigns, as aforesaid, *Upon trust*, in case there should be one or more child or children of the said [*appointor*], by the said [*wife, maiden name*], (besides an eldest or only son), that they the said [*trustees of term*], their executors, administrators, and assigns, should, either in the lifetime of the said [*appointor*], with his consent, or else not till after his decease, by demise, sale, or mortgage of the manor, &c., comprised in the said term of two hundred years, or a competent part thereof; or by such other ways or means as they, or the survivor of them, or the executors or administrators of such survivor, should think fit, raise and levy such sum and sums of money for the portion and portions of all and every such child and children (not being an eldest or only son as aforesaid) as therein and hereinafter mentioned: that is to say, if but one such child, the sum of £——; and if two such children, the sum of £——; and if three or more, the sum of £——; to be shared and divided between or amongst them in such parts and proportions as he the said [*appointor*] should, by any deed or writing, or by his last will and testament, give, direct, limit, or appoint the same: *And* for want of such gift, direction, limitation, or appointment, then the said sums of

7. AND AUTHORITY TO TRUSTEE TO RAISE PORTION.

to the use of the appointor for life;

remainder to trustees to preserve;

remainder to the use that wife might receive a jointure;

remainder to the use of trustees for a term;

remainder to the use of the first and other sons;

remainder to the use of the appointor in fee.

Recital of trusts of term, to raise portions.

7. AND AUTHORITY TO TRUSTEE TO RAISE PORTION.

£—— and £——, so to be raised as aforesaid, (as the case might happen), to be equally divided between them, share and share alike: the portion and portions of such child or children to be paid in manner following; that is to say, To such of them as should be a son or sons, at the age of twenty-one years, and to such of them as should be a daughter or daughters, at the age of twenty-one years, or day of marriage, which should first happen, if such respective times of payment should happen after the decease of the said [*appointor*]; But if in his lifetime, then within three months after his decease, and not sooner, unless with his free consent. AND *it was thereby provided*, that in case any such child or children should die before his, her, or their portion or portions should become payable as aforesaid, then the portion or portions of such child or children should go and be paid unto, and be equally divided among, the survivor or survivors of them, share and share alike, as and when the original portion or portions of such surviving child or children should become payable. AND WHEREAS the said [*appointor*] hath had issue by the said [*wife, maiden name*], now his wife, three sons, and three daughters: that is to say, [*A. T.*], his eldest son, who attained the age of twenty-one years, and is since deceased; [*B. F.*], who died an infant; [*C. F.*], the younger, now of the age of thirty years, or thereabout [*appointee*], who hath attained the age of twenty-one years; and [*E. F.*] and [*W. F.*], both yet infants (*a*). AND WHEREAS a marriage is intended to be

clause of survivorship;

that appointor and his wife have had issue three sons and three daughters, of whom two sons are dead, one after attaining twenty-one, the other an infant;

intended mar-

PREVIOUS APPOINTMENT TO ANOTHER CHILD.

(*a*) If there has been a previous appointment to another child, who is married, say,

Recital of appointment of a portion for another daughter.

"[*former appointee*], who hath attained the age of twenty-one years, and is now the wife of [*M. N.*], esquire, [*appointee*], who hath attained the age of twenty-one years, and [*infant*], now an infant of the age of —— years, or thereabouts. AND WHEREAS by a deed poll, or instrument in writing, under the hand and seal of the said [*appointor*], bearing date on or about &c., he the said [*appointor*], in pursuance of the power reserved to him in and by the said marriage settlement, appointed the sum of £——, part of the sum of £—— thereby provided and directed to be raised for the portions of his daughters and younger sons, (if three or more) as aforesaid, unto the said [*former appointee, mar-*

shortly had and solemnized between the said [*appointee*] and [*intended husband*], of &c., esquire: AND upon the treaty for such marriage, it was, among other things, proposed and agreed, that the said [*appointor*], the elder, should, previously to the solemnization of the said intended marriage, in pursuance of the power in that behalf contained in the said indenture of release and settlement, appoint the sum of £—— (*b*), part of the sum of £——, thereby provided and directed to be raised for the portions of his daughters and younger sons (if three or more) as aforesaid, unto the said [*appointee*] absolutely, as and for her marriage portion or fortune; and should direct the same to be raised and paid immediately upon the solemnization of the said intended marriage, to the intent that he the said [*intended husband*], her intended husband, might become entitled thereto in her right, and have and receive the same to and for his own use and benefit. NOW KNOW YE, that in pursuance and performance of the said agreement; and in pursuance and exercise of the power and authority in that behalf to him given and reserved in and by the said indenture of release and settlement as aforesaid, *He* the said [*appointor*], the elder, by this present deed or writing, by him duly executed in the presence of two credible witnesses, *doth* give, direct, limit, and appoint the sum of £——, part of the said sum of £——, in and by the same indenture of release and settlement provided and directed to be raised for the portions of his daughters and younger sons, (if three or more, as aforesaid), unto the said [*appointee*], her executors, administrators, and assigns, as and for her marriage portion or fortune, in case the said intended marriage should take effect. AND

7. AND AUTHORITY TO TRUSTEE TO RAISE PORTION.

riage of appointee;

agreement to appoint £—— to her absolutely.

Testatum.

Appointment of the portion, in case the marriage should take effect.

Authority to

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ried name], then [*maiden name*], as and for her marriage portion or fortune, in case her then intended marriage with the said [*intended husband*] should take effect: *And* directed the same to be raised and paid immediately upon the solemnization thereof: which sum of £—— was accordingly afterwards raised by a mortgage of part of the estates comprised in the said settlement, and paid to the said [*intended husband*]."

(*b*) If there has been a previous appointment, say, here and in the other similar instances,

PREVIOUS APPOINTMENT,

"further part of" &c. *ut supra.*

7. AND AUTHORITY TO TRUSTEE TO RAISE PORTION.

the said [*appointor*], the elder, doth hereby authorize and direct the said [*trustee*], the surviving trustee of the said term of two hundred years, created by the said indenture of release and settlement, and his executors, administrators, or assigns, forthwith or as soon as may be after the solemnization of the said intended marriage, to raise the said sum of £—— hereby appointed as aforesaid, by a mortgage of a competent part of the estates comprised in the said indenture of release and settlement, and to pay the same to the person or persons who shall be entitled thereto, by virtue of the appointment hereby made as aforesaid. PROVIDED ALWAYS, *nevertheless,* and the said [*appointor*], the elder, doth hereby declare, that the gift and appointment hereby made as aforesaid, is not meant or intended by him to prevent or preclude him from hereafter giving or appointing any part or share of the residue of the said sum of £——, to her the said [*appointee*], in case he should think proper so to do, or to prevent or preclude her from hereafter having or taking under and by virtue of the trusts of the said settlement (*c*) any part or share of the residue of the said sum of £——, in case he the said [*appointor*] should not hereafter make any appointment of or concerning the same, or from having or taking (*d*) any part or share of so much of the said residue as shall or may ultimately remain unappointed by him the said [*appointor*], the elder: *Save only and except* that the said [*appointee*] shall not in (*e*) any event hereafter, unless by the appointment of the said [*appointor*], the elder, have or take any further or greater part of the said residue of the said sum of £——, than will, with the said sum of £—— hereby given and appointed to her as aforesaid, make up what would (*g*) have been the full part or share of her the said [*appointee*] under and by virtue of the trusts of the

the surviving trustee of the term, to raise the portion by mortgage forthwith.

Proviso, that appointment is not to prevent a further appointment to appointee, or to preclude her from taking any share of the residue.

Hotchpot clause.

LARGER APPOINTMENT THAN A DISTRIBUTIVE SHARE, WHERE THERE IS AN INFANT.

(*c*) If the sum appointed be larger than the appointee's distributive share would have been, in case there had been no appointment; say £2000, there being, for instance, £3000 and three objects, one of them not having gained a vested interest in her share in default of appointment; then, provided it be the intention of the appointor, add, "in the event of the death of her sister, the aforesaid [*infant*], without having acquired a vested interest therein, any part" &c. *ut supra.*

(*d*) "in the same event, any part" &c. *ut supra.*

(*e*) "such event, except by" *ut supra.*

(*g*) "in the same event have been" &c. *ut supra.*

said settlement of and in the said sum of £ ——, in case he the said [*appointor*] had not made any appointment whatsoever of or concerning the same, or any part thereof (*h*). In witness &c. *ut ante*, p. 514.

7. and authority to trustee to raise portion.

(*h*) If the appointment be larger than the distributive share in default of appointment, and there is an infant, provided it be the intention, add, "*But* in the event of the said [*infant's*] living to acquire a vested interest in the said residue of the said sum of £——, subject to her said father's power of appointment, the said [*appointee*] is not to have or take any part or share of the said residue, in case the said [*father*] should not make any appointment of or concerning the same, or to have or take any part or share of so much of the said residue as shall or may ultimately remain unappointed by him."

larger appointment than distributive share.

In case infant acquires a vested interest, appointee not to take any share of the residue in default of appointment.

8. APPOINTMENT, *under Power in a Settlement, by a married Woman to her husband, of One-Third of the Money arising from the Sale of Shipping and Fire Shares: and* Release *by the Husband for himself and his Wife, and by two other Persons entitled to the Remaining Two-Thirds, to the surviving Trustee, and the Representatives of the deceased Trustee, of all demands in relation to the trusts declared by the Settlement.*

8. of money by a wife to her husband, and release by three to trustees.

THIS INDENTURE, made &c., Between [*appointor*], the wife of [*husband*], of &c., (late [*maiden name*], spinster), of the first part; the said [*husband*], of the second part; [*son*], of &c., of the third part; [*daughter*], of &c, spinster, of the fourth part; and [*trustee*], of &c., of the fifth part. Whereas by indenture bearing date on or about &c. and made between [*father of the person beneficially interested*], of the one part; and [*deceased trustee*], and the said [*trustee*], of the other part; *After reciting* that the said [*father*], on the death of [*wife*], his late wife, deceased, became entitled to sixteen shipping shares, and sixteen fire shares, of and in the Corporation of the London Assurance of houses and goods from fire: *And also reciting,* that the said [*father*] had issue by the said [*wife*], his said wife, three children, that is to say, the said [*appointor*], then and now the wife

Parties.

Recital of a settlement of sixteen shipping shares, and sixteen fire shares, in the London Assurance,

8. OF MONEY BY A WIFE TO HER HUSBAND, AND RELEASE BY THREE TO TRUSTEES.

of the said [*husband*], and the said [*son*], and [*daughter*], *And also reciting* that the said several shares had been transferred into, and were then standing in the names of the said [*trustees*], in the respective books, kept for the transfer of the said shares; *It was witnessed*, agreed, and declared that they the said [*trustees*], their executors and administrators, should stand possessed of the said several shipping and fire shares, funds, and securities so standing in their names as aforesaid, and of and in the dividends, benefit, and advantage thereof, *in trust* to pay to or authorize and empower the said [*father*], or his assigns, to receive and take the dividends and produce thereof to his and their own use, during his life: *And* after his decease, *In trust* as to one undivided third part of the said shipping and fire shares, and the dividends, benefit, and advantage thereof, for such person or persons, and in such shares and proportions, manner, and form, as the said [*appointor*] alone, notwithstanding her coverture (*a*) should by any deed or deeds, writing or writings, with or without power of revocation, to be by her sealed and delivered in the presence of, and attested by, two or more credible witnesses; or by her last will and testament direct or appoint; *So* as such direction or appointment were made after the decease of the said [*father*]: *And* as to one other third part or share of the said shipping and fire shares, from and after the decease of the said [*father*], in trust for the said [*son*], in case he should be then living: *And* as to the remaining third part or share of the said shipping and fire shares, from and after the decease of the said [*father*], *In trust* for the said [*daughter*], in case he should be then living. AND WHEREAS the said [*deceased trustee*] died in or about the month of ——: AND WHEREAS the said [*father*] died on or about the —— day of ——, last past. AND WHEREAS the said [*appointor*], the wife of the said [*husband*], hath declared her intention to make an absolute appointment of her one-third part of the said shipping and fire shares comprised in the said indenture of the —— day of ——, (in exercise of the power thereby vested in her), to the said [*husband*], her husband, his executors, administrators, and assigns, in the manner hereinafter mentioned. AND WHEREAS the said [*trustee*], on the faith of the said in-

transferred to two trustees,

in trust, for the father for his life;

and after his decease, in trust as to one-third part as appointor should appoint;

as to another third in trust for son, if then living,

and as to remaining third, in trust for daughter, if then living;

death of one of the trustees; father's death;

appointor's declaration to make an appointment of her third to her husband;

that trustee

(*a*) As to an appointment by a married woman, *vide ante*, p. 467.

8. OF MONEY BY A WIFE TO HER HUSBAND, AND RELEASE BY THREE TO TRUSTEES.

tended appointment being made by her the said [*appointor*], hath this day, at the instance and request of the said [*husband*], and [*appointor*] his wife, [*son*], and [*daughter*], respectively sold and disposed of the said shipping and fire shares so vested in him, upon the trusts of the said indenture of the —— day of ——, as aforesaid; and the same produced (after paying all incidental expenses) the clear sum of £——: which thereupon became divisible in equal third parts, between the said [*husband*], [*son*], and [*daughter*], *And* accordingly he the said [*trustee*], hath, at or immediately before the sealing and delivery of these presents, paid the clear sum of £——, one equal third part of the clear sum of £——, to the said [*husband*], (on the appointment and by the express direction of the said [*appointor*], his wife); *And* hath at the same time paid the sum of £——, and £——, the two remaining third parts of the said sum of £——, to the said [*son*] and [*daughter*] respectively; in consideration of which payments, they the said [*husband*], [*son*], and [*daughter*], have agreed to join in releasing the said [*trustee*], in the manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said intention of the said [*appointor*], and in order to complete the title of the said [*husband*], to the said sum of £——, one-third part of the said sum of £——, the produce of the aforesaid shipping and fire-shares), *She* the said [*appointor*], (in exercise, and by virtue of the power or authority given to or vested in her by or under and by virtue of the said indenture of the —— day of ——, as aforesaid, and of all other powers enabling her in this behalf), *doth* by this deed or writing, sealed and delivered by her in the presence of the two credible persons whose names are intended to be hereupon indorsed, as witnesses attesting such sealing and delivery, direct and appoint; and also, give, assign, and make over to the said [*husband*], her husband, his executors, administrators, and assigns, ALL THAT the one full and equal third part or share, by the said indenture of the —— day of ——, settled upon, or intended for her the said [*appointor*], of and in the said sixteen shipping shares, and sixteen fire shares, of and in the said corporation of the London Assurance; or of and in the produce of or from the sale and disposition of the same: and the dividends, interest, and proceeds thereof: AND the full and whole right, title, and interest, benefit, and advantage,

hath sold the shares;

and paid over the produce.

First testatum.

Appointment by a married woman under a power.

to her husband of one-third of sixteen shipping shares and sixteen fire shares in the London Assurance.

All the right, &c.

8. OF MONEY BY A WIFE TO HER HUSBAND, AND RELEASE BY THREE TO TRUSTEE.

of, in, and to the said one-third part of the said shipping and fire shares respectively with the appurtenances. To HAVE, hold, receive, and take the same, unto and by him the said [*husband*] his executors, administrators, and assigns, for his and their own absolute use and benefit. AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance of the above-recited agreement, and for and in consideration of the said sums of £——, £——, and £——, respectively, so paid by the said [*trustee*] to them the said [*husband*], [*son*], and [*daughter*], as hereinbefore mentioned; the receipt whereof they the said [*husband*], [*son*], and [*daughter*], do hereby respectively acknowledge; and of and from the same, and every part thereof, acquit, release, and discharge the said [*trustee*], his heirs, executors, and administrators for ever, by these presents; *They* the said [*husband*], for himself, and the said [*appointor*], his wife respectively, and for the heirs, executors, and administrators of them and each of them; *And* the said [*son*], for himself, his heirs, executors, and administrators; *And* the said [*daughter*], for herself, her heirs, executors, and administrators, by these presents *do*, and each of them *doth* remise, release, and for ever quit claim unto the said [*trustee*], his heirs, executors, and administrators: and also to the heirs, executors, administrators, and assigns, of the said [*deceased trustee*], deceased, ALL actions, and suits, cause or causes of action or suit, and other proceedings at law or in equity, accounts, reckonings, claims, and demands whatsoever, which they the said [*husband*], and [*appointor*] his wife, [*son*], and [*daughter*] respectively, or any or either of them, now have, or hath, or ever had, or can, or may, or otherwise could or might bring, commence, carry on, claim, and demand against the said [*trustee*], his heirs, executors, administrators, or assigns, or the said [*deceased trustee*], deceased, his heirs, executors, administrators, or assigns, or any or one of them, or the lands, tenements, goods, and chattels whatsoever of them, any or one of them, for or on account of the said sixteen shipping shares, and sixteen fire shares, in the said London Assurance Office, so vested in them the said [*trustees*], on the trusts of the said indenture of the—— day of ——, as hereinbefore recited, or any of them: or the dividends, interest, or yearly proceeds thereof, or any part thereof, or the sum or sums of money produced by the sale or disposition of the said shares, or any or one of them; or for, or on account, or in consequence of the trusts declared by

Habendum.

Second testatum.

Release by husband, for himself and wife, and by two others,

to trustee and the representatives of deceased trustee, of all actions, &c.

the said indenture of the —— day of ——, as aforesaid, or any of them, or any clause, matter, or thing whatsoever, in the said indenture contained, or in anywise relating thereto, from the day of the date of the said indenture, up to the day of the date of these presents. IN WITNESS &c.

8. OF MONEY BY A WIFE TO HER HUSBAND, AND RELEASE BY THREE TO TRUSTEES.

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9. APPOINTMENT *by Husband and Wife, under a Power in their Marriage Settlement, of a* SUM OF MONEY *among their Seven Children; namely, nominal Sums to the eldest, and to a married Daughter, on whose Marriage the Father advanced a Portion, and the Residue equally among a Son and Four Daughters, Infants; the Son's Share to vest at Twenty-one, the Daughters' Shares to vest at Twenty-one, or Marriage; but the Payment to be postponed until the Parents' Death; with Benefit of* SURVIVORSHIP *and* ACCRUER; *and Direction to the Trustees to apply the Interest for* MAINTENANCE *after the Parents' Decease, until the Shares vest: But if neither of the Infants should live to gain a vested Interest, their Shares to be divided between the eldest Son, and married Daughter equally.*

9. OF MONEY, NOMINAL AND SUBSTANTIAL SHARES, BENEFIT OF SURVIVORSHIP, MAINTENANCE, &c.

TO ALL PERSONS WHOM THESE PRESENTS SHALL COME UNTO OR CONCERN, [*appointor*], of &c., and [*other appointor*], his wife, whose maiden name was [*maiden name*]; and [*eldest son of appointors*], of &c., and [*husband of daughter of appointors*], of &c., and [*A.*] his wife, whose maiden name was [*maiden name*], *severally send greeting.* WHEREAS (*recite marriage settlement*), *whereby appointor covenanted to invest* [3000*l.*] *belonging to his wife, in the names of trustees, In trust for husband and wife for their respective lives; And after the decease of the survivor, to divide the principal money among all and every their children as they should appoint*). AND WHEREAS the marriage between the said [*appointor*] and [*wife, maiden name*], hath been duly had and solemnized: AND there are seven children of the said marriage, now living, that is to say; the said [*eldest son*], their eldest son, who hath attained his age of twenty-one years, the said [*A.*] the wife of the said [*husband*] and [*son, and four daughters*]; which

Exordium.

Recital of settlement, giving a power to appoint a sum among all the children of the marriage, in such shares as parents should appoint.

Recital of the marriage,

and that there are seven children—eldest son of age; eldest daughter married, and

9. OF MONEY, NOMINAL AND SUBSTANTIAL SHARES, BENEFIT OF SURVIVORSHIP, MAINTENANCE, &c.

[*son and four daughters*] are respectively under the age of twenty-one years. AND WHEREAS the said [*appointor*] hath previously to the execution of these presents secured to the said [*husband*] the sum of [3000*l.*] as the portion or fortune of the said [*A.*] his wife: AND the said [*eldest son*] is also otherwise provided for. NOW KNOW YE, AND THESE PRESENTS WITNESS, that the said [*appointor*], and [*wife*], his wife, in pursuance of the power or authority for that purpose given or reserved to them by the said indenture; and by force and by virtue thereof, and of every other power or authority enabling them in this behalf; by this deed or instrument in writing, under the hands and seals of the said [*appointor*], and [*wife*], his wife, and attested by two credible witnesses, *do* jointly direct and appoint, *That* the said sum of £——, by the said indenture covenanted or agreed to be assigned to, and vested in the said [*trustees*] as aforesaid; and the stocks, funds, and securities in, or upon which the same is, or shall, or may be laid out, or invested, shall be shared and divided among, and shall, after the decease of the said [*appointor*], and [*wife*], his wife, be paid to the children of the said [*appointor*], and [*wife*], his wife, in the proportions following; that is to say, the sum of £——, part thereof, to be the share of the said [*eldest son*], and to be an interest vested in him immediately upon the execution of these presents; and the sum of £——, other part thereof, to be the share of the said [*married daughter*], and to be an interest vested in her immediately upon the execution of these presents; *But* the actual payment of the said sums of £—— and £——, to be postponed until the decease of the survivor of the said [*appointor*], and [*other appointor*], his wife: *And* as to the sum of £——, being the remaining part of the said sum of £——, the same to be equally divided among the said [*son, and four daughters*], share and share alike; the share of the said [*son*], to be an interest vested in him at his age of twenty-one years; and the share of each of them the said [*daughters*], to be an interest vested in her at the age of twenty-one years, or day of marriage, which shall first happen; *But* if the said [*son*], or any of them the said [*daughters*], should attain a vested interest in his, her, or their share, or respective shares, in the lifetime of the said [*appointor*], and [*other appointor*], his wife, or of the survivor of them, then the actual payment of his, her, or their share, or respective

five infants; advancement of portion for married daughter; and provision for eldest son.

Testatum.

Appointment by husband and wife,

that the sum

shall be divided after the parents' decease, and be paid to their children in the proportions following:

£—— to the eldest son, to be vested immediately:

£—— to married daughter, to be vested immediately:

but the payment to be postponed till parents' death; and £——, the remainder, equally among the other children;

son's share to vest at 21; daughters' shares to vest at 21, or marriage; but the pay-

shares shall be postponed until the decease of the survivor of the said [*appointor*], and [*other appointor*], his wife. PROVIDED ALWAYS, and the said [*appointor*], and [*other appointor*], his wife, do hereby further direct and appoint, that if the said [*son*] should happen to die under the age of twenty-one years; or if any of them the said [*daughters*] should happen to die under the age of twenty-one years, without being or having been married, then the share or shares of him, her, or them so dying, of and in the said sum of £——, shall go and accrue to the survivor or survivors of them; and shall vest in, and be paid to him, her, or them (if more than one), in equal parts and shares, at or upon such and the same ages, days, and times respectively, and in such and the same manner as is hereinbefore directed and appointed touching or concerning his, her, or their original portion or portions, or as near thereto as circumstances will permit: AND (*a*) that in case any other or others of such children should die before such accruing or surviving part or share, parts or shares, shall become vested as aforesaid, then all and every such accruing or surviving part or share, parts or shares, shall again be subject and liable to such new chance, contingency, and condition of accruer to the survivor or survivors, and other or others of such children, as before is declared touching his, her, and their original portion and portions. AND the said [*appointor*] and [*other appointor*], his wife, do hereby further direct and appoint, that in the mean time, after the decease of the survivor of them the said [*appointor*], and [*other appointor*], his wife, the income, or the dividends, interest, or annual produce, of the presumptive share of each of them the said [*son*] and [*daughters*], of and in the said sum of £——, shall be applied by the trustees or trustee for the time being of the above-recited indenture, for or towards his or her maintenance, education, and support, until such his or her share shall become vested, or he or she shall previously die. *But* in case the said [*son*] should die under the age of twenty-one years; and if each of them the said [*daughters*], should die under the age of

ment to be postponed till parents' death.

Survivorship between the younger children, in case the son dies under 21, or the daughters under 21, without having been married.

Benefit of survivorship to extend to accruing shares.

Appointment of maintenance after parents' decease, until shares vest.

If son die under 21, or daughters die under 21, with-

(*a*) This clause may be more shortly expressed, thus,

"AND that such benefit of survivorship and accruer shall extend as well to the surviving or accruing as to the original portion or portions."

Short clause, survivorship to extend to accruing shares.

9. OF MONEY, NOMINAL AND SUBSTANTIAL SHARES, BENEFIT OF SURVIVORSHIP, MAINTENANCE, &c.

twenty-one years, and without being or having been married, then the said sum of £—— shall be divided between the said [*eldest son*], and [*A.*] the wife of the said [*husband*], share and share alike, and their respective executors, administrators, and assigns. IN WITNESS whereof they the said [*appointor*], and [*wife*], his wife, have hereunto set their hands and seals the —— day of ——.

out having been married, to be between the eldest son and married daughter equally.

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10. OF STOCK TO CHILDREN EQUALLY; PARTIAL SURVIVORSHIP; POWER OF REVOCATION.

10. APPOINTMENT *by a Father, of* STOCK *amongst his* YOUNGER CHILDREN EQUALLY, *subject to his own and his Wife's Life Interest therein, with* PROVISOES *that if either of two Infant Daughters should die under Twenty-one, without having been married, her share shall go to the other younger Children; and that if both Infant Daughters should die under Twenty-one, without having been married, the original and accruing Share of the Survivor shall go to the other younger Children; and a* POWER *of* REVOCATION. *The Stock being the Produce of a Sale of Lands limited after Estates for Life to the use of such one or more of the Children as the Father should appoint; which Lands were appointed to the eldest Son for the Purpose of being sold by him, in order that the Produce might be invested and be held upon Trusts similar to the Uses declared of the Lands.*

Recital of settlement on appointor's marriage.

TO ALL TO WHOM THESE PRESENTS SHALL COME, [*appointor*], of &c., esquire, *sends greeting*. WHEREAS by indentures of lease and release, bearing date respectively on or about &c. the release being expressed to be made between [*C. B. father*], of the first part; the said [*C. B. appointor*], party hereto, son of the last-mentioned [*father*], of the second part; [*father of intended wife*], and [*intended wife*], one of the daughters of the said [*father of intended wife*], of the third part; [*releasees*] of the fourth part; and [*trustees of term*], of the fifth part; *In consideration* of a marriage then intended to be and soon afterwards solemnized between the said [*appointor*], party hereto, and [*wife, maiden*

name], a certain mansion-house, farms, lands, tenements, and hereditaments, situate in the parishes of ——, &c. were conveyed unto the said [*releasees*], their heirs and assigns, subject to a term of 500 years, created by an indenture of release bearing date on or about the —— day of ——, the trusts of which said term were for the purpose of raising a sum of £——, at the request of the said [*C. B.*], the father, his executors or administrators, but which sum has never been raised; and also subject to an annuity of £——, payable to [*A. B.*], the wife of the said [*C. B.*], the father, for her life; *To the use* of the said [*C. B.*], the father, and his assigns, for his life, without impeachment of waste; with a limitation *To the use* of the said [*releasees*], and their heirs, during the life of the said [*C. B.*], the father, *In trust*, to support the contingent remainders thereinafter limited; with remainder *To the use* of the said [*appointor*], party hereto, his heirs and assigns, until the solemnization of the said then intended marriage; and after the solemnization thereof, *To the use* of the said [*appointor*], party hereto, and his assigns, for his life, with a limitation, *To the use* of the said [*releasees*] and their heirs, during the life of the said [*appointor*], party hereto, *In trust*, to support the contingent remainders thereinafter limited; remainder *To the use* of the said [*intended wife, maiden name*], and her assigns, for her life; remainder *To the use* of all and every, or such one or more of the child or children of the said [*appointor*], party hereto, by the said [*intended wife, maiden name*], for such estate or estates in possession, reversion, remainder, or contingency, and in such parts, shares, and proportions, and subject to such provisoes, conditions, and limitations, and to such charges, either of annuities, or sums of money in gross, on the whole of the premises, together or in part or parts, thereof, only for the benefit of some or one of such children, as the said [*appointor*], party hereto, by any deed or deeds, instrument or instruments in writing, with or without power of revocation, and of limiting new uses, to be sealed and delivered by him in the presence of, and to be attested by two or more credible witnesses, should direct, limit, or appoint. And whereas the said [*A.*], the wife of the said [*C. B*], the father, departed this life in his lifetime; And the said [*C. B.*] the father, departed this life on or about the —— day of ——, having first duly signed and published his last will and testament in writing, bearing date on or about the

10. Of stock to children equally; partial survivorship; power of revocation.

whereby lands were conveyed (subject to a term, for raising a sum, and to an annuity to appointor's mother)

to the use of appointor's father for life;

remainder to trustees to preserve;

remainder, to the use of appointor till marriage;

and after marriage, to the use of appointor for life;

remainder to the use of trustees, to preserve contingent remainders;

remainder, to the use of intended wife for life, in bar of dower;

remainder to the use of such one or more of the child or children of the marriage, as the father should by deed or will appoint;

death of appointor's mother;

the death of appointor's father, having made his will,

10. OF STOCK TO CHILDREN EQUALLY; PARTIAL SURVIVORSHIP; POWER OF REVOCATION.

—— day of ——, and appointed the said [*appointor*], party hereto, sole executor thereof; and soon after the decease of the said [*C. B.*], the father, the said [*appointor*] party hereto, duly proved the said will in the Prerogative Court of the Archbishop of Canterbury. AND WHEREAS by a deed-poll, or instrument in writing, bearing date on or about &c. under the hand and seal of the said [*appointor*], party hereto, *He* the said [*appointor*], party hereto, in execution of the power reserved by the said indenture of release of the —— day of ——, and of all other powers, *did* limit, direct, and appoint, *that* certain messuages, farms, lands, tenements, and hereditaments, (parcel of the hereditaments and premises comprised in the said indenture of release of the —— day of ——), should, immediately upon the decease of the survivor of them the said [*appointor*] party hereto, and [*wife*] his wife, be and enure *To the only use and behoof* of [*eldest son*], the eldest son of the said [*appointor*], party hereto, his heirs and assigns, freed and discharged from the said sum of £——, so to be raised as aforesaid; and from the right and interest of the said [*appointor*], party hereto, as executor as aforesaid, or otherwise. AND WHEREAS, by an indenture bearing even date with the said deed-poll, and expressed to be made between the said [*eldest son*], the son, of the one part; and the said [*appointor*], party hereto, of the other part; the said [*eldest son*], the son, did covenant with the said [*appointor*] party hereto, to make and execute all necessary conveyances and assurances to convey the premises so appointed to him, as aforesaid, to [*three purchasers*] respectively, who had contracted for the purchase of the same, as therein is mentioned: AND *it was thereby covenanted and agreed*, that the consideration monies, after deducting the expenses, should be laid out in capital stock, in the names of [*three trustees*], *Upon the trusts*, and subject to the powers and provisoes in the next hereinafter recited indenture mentioned. AND WHEREAS, by an indenture bearing date &c., and expressed to be made between the said [*appointor*], party hereto, and [*wife*], his wife, and the said [*eldest son*], the eldest son, of the one part; and the said [*three trustees*], of the other part; *After reciting* that the said [*one of the purchasers*] has since assigned his contract to [*new purchaser*]: *And that* the premises so contracted for, with other lands not included in the said indenture of release of the —— day of ——, had been con-

and named appointor, executor;

of appointment by deed-poll;

indenture of even date with deed-poll;

whereby the son covenanted to convey the premises appointed to persons who had contracted for the purchase thereof;

and the consideration monies to be laid out in stock, on the trusts mentioned in the next recited deed;

Indenture;

10. OF STOCK TO CHILDREN EQUALLY; PARTIAL SURVIVORSHIP; POWER OF REVOCATION.

veyed unto the said purchaser: *And* that the costs and charges amounted to £——, which being deducted from £——, the purchase-monies, left a balance of £——, to be settled in manner therein and hereinafter mentioned; *It is witnessed*, that for settling the said sum of £——, the said [*appointor*], party hereto, covenanted with the said [*three trustees*], that he the said [*appointor*], party hereto, would within two calendar months invest the said sum of £—— in their names, in the purchase of £——, 3*l.* 10*s.* per cent. Consolidated Bank Annuities. AND *it was by the said indenture agreed*, that after such investment the said [*trustees*], their executors, administrators, and assigns, should stand possessed thereof, *In trust* to pay the interest and dividends thereof unto the said [*appointor*], party hereto, for his life; *And* after his decease, in case the said [*wife*], his wife, should survive him, *In trust*, to pay the said interest and dividends to her for life: *And* after the decease of the survivor of them, the said [*appointor*], party hereto, and [*wife*], his wife, *In trust*, to raise £—— by sale or transfer of a sufficient part of the said Consolidated Annuities, upon the trusts thereinafter declared; *And* subject to the raising of the same, *Upon trust*, as to all the residue of the said trust monies, for all and every, or such one or more of the child or children of the said [*appointor*], party hereto, by the said [*wife*], his wife, for such estate and estates, interest, and interests, in possession, reversion, remainder, or contingency; and in such parts, shares, and proportions, and subject to such provisoes, conditions, and limitations, and to such charges, either of annuities, or sums of money in gross, on the whole of the said rest, residue, and remainder of the said capital stock, together or in part or parcel thereof only, for the benefit of some or one such children as the said [*appointor*], the elder, party thereto, at any time or times thereafter, by any deed or deeds, instrument or instruments in writing, with or without power of revocation, and of limiting new or other estates or interests therein, to be sealed and delivered by him, in the presence of and to be attested by two or more credible witnesses, or by his last will and testament. AND WHEREAS, soon after the execution of the said indenture of the —— day of ——, the said sum of £—— was invested in the purchase of the sum of £——, 3*l.* 10*s.* per cent. Consolidated Bank Annuities, in the names of the said [*three trustees*], of whom the said [*surviving trustee*] is

whereby appointor covenanted to invest the balance of the purchase monies in Consols in their names.

In trust to pay the interest to appointor for life;

then to his wife for life;

then trust to raise out of the capital £—— upon the trusts thereinafter declared;

and subject thereto upon trust for children, as appointor should by deed or will direct,

that the £—— was invested in the purchase of £— Consols in the names of three trustees, two of whom are now dead;

10. OF STOCK TO CHILDREN EQUALLY; PARTIAL SURVIVORSHIP; POWER OF REVOCATION.

now the only survivor. AND WHEREAS the said [*eldest son*], the eldest son of the said [*appointor*], party hereto, hath departed this life: AND the said [*appointor*], party hereto, hath issue by the said [*wife*], his wife, now living, two sons, (namely), [A. B.], now his eldest son; [C. B.], his youngest son, and five daughters, (namely), [E. Y.], the wife of &c., [F. B.], [G. B.], [H. B.], and [I. B.]; and all the said children, except the said [H. B.] and [I. B.], have attained the age of twenty-one years. AND WHEREAS the said [*appointor*] party hereto, is desirous of appointing amongst his said youngest son and five daughters, in the manner hereinafter mentioned, so much of the said sum of £——, 3*l.* 10*s.* per cent. Consolidated Bank Annuities, as shall remain after raising the said sum of £—— thereout as aforesaid. NOW THESE PRESENTS WITNESS, that for carrying the said desire into effect, and in consideration of the natural love and affection which he hath for his said youngest son and five daughters, and by force and virtue, and in exercise and execution of the power or authority to him for this purpose given or reserved by the above recited indentures of the —— day of ——, and the —— and ——, or either of them, and of all other powers and authorities enabling him in this behalf, *He* the said [*appointor*], party hereto, *doth* by his deed, or instrument in writing, sealed and delivered by him in the presence of the two credible persons whose names are intended to be hereupon indorsed, as witnesses attesting the sealing and delivery of these presents by him the said [*appointor*], party hereto, direct, limit, and appoint, that from and immediately after the decease of the survivor of them, the said [*appointor*], party hereto, and [*wife*], his wife, so much of the said sum of £——, 3*l.* 10*s.* per cent. Consolidated Bank Annuities, as shall remain after raising the said sum of £——, so to be raised thereout, as hereinbefore is mentioned; and the interest and dividends thereof, shall remain and be, IN TRUST for the said [C. B.], [E. Y.], [F. B.], [G. B], [H. B.], and [I. B.] respectively, and their respective executors, administrators, and assigns, in equal shares, as tenants in common. PROVIDED NEVERTHELESS, that if either of them the said [H. B.] and [I. B.], shall die under the age of twenty-one years, without being, or having been married, then and in such case, the share of her so dying, of and in the said residue of the said sum of £——, 3*l.* 10*s.* per cent. Consolidated Bank Annuities, shall go and remain

that appointor's eldest son is dead.

and that appointor has living, his wife, two sons, and five daughters, all of whom, except two of the daughters, have attained twenty-one.

That appointor is desirous of appointing, &c. *Testatum.*

Appointment by the father,

that after his and his wife's death, so much of the stock as shall remain after raising £——, shall be in trust for his younger children equally.

Proviso, that if either of the two infant daughters should die under 21, without having been married, her share shall go to the other younger children.

to the said [C. B.], [E. Y.], [F. B.], and [G. B.], and the survivor of them, the said [H. B.] and [I. B.], in equal shares, as tenants in common. PROVIDED FURTHER NEVERTHELESS, that if both of them the said [H. B.] and [I. B.] shall die under the age of twenty-one years, without being or having been married, then and in such case, as well the original share of the survivor of them, so dying, as the share which by virtue of the last-mentioned clause shall have survived or accrued to the survivor of them, of and in the said residue of the said sum of £——, 3*l.* 10*s.* per cent. Consolidated Bank Annuities shall go, and remain to the said [C. B.], [E. Y.], [F. B.], and [G. B.], in equal shares, as tenants in common. PROVIDED FURTHER NEVERTHELESS, and the said [*appointor*], party hereto, doth hereby declare, that it shall be lawful for the said [*appointor*], party hereto, at any time or times hereafter, by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by him in the presence of and attested by two or more credible witnesses, to revoke, determine, and make void, all or any of the trusts, intents, purposes, and provisions hereinbefore directed, appointed, declared, and contained, of and concerning the said residue of the said sum of £——, 3*l.* 10*s.* per cent. Consolidated Bank Annuities, and the interest and dividends thereof, or any part thereof respectively. IN WITNESS &c., *ut ante*, p. 514.

10. OF STOCK TO CHIRDREN EQUALLY; PARTIAL SURVIVORSHIP; POWER OF REVOCATION.

Proviso, that if both infant daughters should die under 21, without having been married, the original and accruing share of the survivor shall go to the other younger children.

Power of revocation.

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11. APPOINTMENT *of a* GAMEKEEPER *to kill Game, seize Engines, &c.* (*a*).

11. GAMEKEEPER TO KILL GAME, &c.

KNOW ALL MEN BY THESE PRESENTS, *That* I [*lord or lady*], of &c., lord (*or* lady) of the manor of ——, in the city

(*a*) [The stat. 1 & 2 Will. 4, c. 32, (which extends only to England and Wales), by sect. 1, repeals the following statutes:—13 Ric. 2, st. 1, c. 13; 22 Edw. 4, c. 6; 11 Hen. 7, c. 17; 19 Hen. 7, c. 11; 14 & 15 Hen. 8, c. 10; 25 Hen. 8, c. 11; 33 Hen. 8, c. 6; 23 Eliz. c. 10; 2 Jac. 1, c. 27; 7 Jac. 1, c. 11; 22 & 23 Car. 2, c. 25; 4 Will. & M. c. 23; 5 Anne, c. 14; 9 Anne, c. 25; 8 Geo. 1, c. 19; 10 Geo. 2, c. 32; 26 Geo. 2, c. 2; 28 Geo. 2, c. 12; 2 Geo. 3, c. 19; 13 Geo. 3, c. 55; 39 Geo. 3,

Game: Stat. 1 & 2 Will. 4, c. 32. Repealed acts.

11. GAMEKEEPER TO KILL GAME, &c.

of ——, do hereby empower, authorize, nominate, and appoint [*gamekeeper*], of ——, in the city of ——, yeoman,

Stat. 1 & 2, *Will.* 4, *c.* 32.

c. 34; 43 Geo. 3, c. 112; 48 Geo. 3, c. 93; 50 Geo. 3, c. 67; 58 Geo. 3, c. 75, and 59 Geo. 3, c. 102.]

Act not to affect laws respecting game certificates.

[By sect. 4, it is provided, that the act shall not affect any law in force respecting game certificates (except as thereinafter mentioned) either as to game, or as to any woodcocks, snipe, quail or landrail, or any conies. "And that all regulations and provisions contained in any act or acts relative to game certificates, so far as they relate to gamekeepers of manors, and to the amount of duty for game certificates to be charged upon or in respect of gamekeepers of manors in the cases specified in such act or acts, shall extend and apply to all gamekeepers *of lands* appointed under this act, as fully and effectually as if they were gamekeepers of manors, and were expressly mentioned in and charged by such act or acts."

Every certificated person may kill game subject to the laws of trespass. Proviso as to gamekeepers.

Sect. 6. "That every person who shall have obtained an annual game certificate, shall be authorized to kill and take game, subject always to an action, or to such other proceedings as are hereinafter mentioned, for any trespass by him committed in search or pursuit of game; provided that no game certificate on which a less duty than 3*l.* 13*s.* 6*d.** is chargeable, shall authorize any gamekeeper to kill or take any game, or to use any dog, gun, net, or other engine or instrument for killing or taking game, except within the limits included in his appointment as gamekeeper."

Under existing leases the landlord to have the game, except in certain cases.

Sect. 7. Where the land is occupied under any lease or agreement made before the passing of the act, the landlord shall have the right of entering, or of authorizing any certificated person or persons to enter upon the land for the purpose of killing or taking the game thereon; and no occupier under such lease or agreement, whether for life or for years, shall kill or take the game, except where the right has been granted under such lease or agreement, or where the lease has been made or renewed upon fine, or in case of a lease or agreement for more than twenty-one years.

Act not to affect agreements respecting game nor rights of manor, chase, or warren.

Sect. 8. The act shall not give any power over the game to any person seised or possessed of or holding any land where "by any deed, grant, lease, or any written or *parol*† demise or contract" a right of entry for the purpose of killing or taking the game, has been or shall be reserved or retained by, or given, or allowed to any person; nor affect any reservation, exception, covenant, or agreement, already contained in any private act of Parliament, deed, or writing, relating to the game upon any land, nor prejudice the rights of any lord or owner of any forest, chase, or warren, or of any lord of any manor, lordship, or royalty, or reputed manor, &c. or of any steward of the Crown of any manor, &c., appertaining to his Majesty.

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* [The amount of the annual duty on game certificates generally; 52 Geo. 3, c. 93.]

† [See *Bird* v. *Higginson*, 4 Nev. & M. 505, *infra*, Vol. 4, p. 664.]

(gentleman *or* esquire), to be a gamekeeper of, in, and to my said manor, with full power, license, and authority within

11. GAMEKEEPER TO KILL GAME, &c.

Sect. 9. Act not to affect any of the forest rights, &c. of the Crown.

Stat. 1 & 2, *Will.* 4, *c.* 32.

Sect. 10. Act not to affect any cattlegates or right of common, but the lord of the manor shall have the game on the wastes, and may grant privileges of shooting, &c., there.

Sect. 11. The landlord having the game may authorize others to kill it.

Lords of manors may appoint gamekeepers.

Sect. 13 enacts, "That it shall be lawful for any lord of a manor, lordship, or royalty, or reputed manor, &c., or the steward of the Crown of any manor, &c., appertaining to his Majesty, by writing under hand and seal, or, in case of a body corporate, then under the seal of such body corporate, to appoint one or more person or persons as a gamekeeper*, to preserve or kill the game within the limits of such manor, &c., for the use of such lord or steward thereof; and to authorize such gamekeeper or gamekeepers, within the said limits, to seize and take for the use of such lord or steward all such dogs, nets, and other engines and instruments for the killing and taking of game, as shall be used within the said limits, by any person not authorized to kill game *for want of a game certificate*."

Powers of gamekeepers.

Lords of manors may grant deputations.

Sect. 14. "That it shall be lawful for any lord of a manor, &c., or any steward of the Crown of any manor, &c., to appoint and depute any person whatever, whether acting as a gamekeeper to any other person or not, or whether retained and paid for as the male servant of any other person or not, to be a gamekeeper for any such manor, &c., or for such division or district of such manor, &c., as such lord or steward shall think fit; and to authorize such person as gamekeeper to kill game within the same, for his own use, or for the use of any other person or persons who may be specified in such appointment or deputation, and also to give to such person all such powers and authorities as may, by virtue of this act, be given to any gamekeeper of a manor; and no person so appointed gamekeeper, and empowered to kill game for his own use, or for the use of any other person so specified as aforesaid, and not killing any game for the use of the lord or steward of the Crown of the manor, &c., for which such deputation or appointment shall be given, shall be deemed to be, or shall be entered or paid for as the gamekeeper or male servant of the lord or steward making such appointment or deputation; anything in any act or acts contained to the contrary notwithstanding."

Regulations respecting appointments of gamekeepers in Wales.

Sect. 15. "That it shall be lawful for every person who shall be entitled to kill the game upon any lands in Wales of the clear annual value of £500, whereof he shall be seised in fee, or as of freehold, or to which he shall otherwise be beneficially entitled in his own right, if such lands shall not be within the bounds of any manor, &c., or if, being

* [As to appointments before the passing of the act, see *Bush* v. *Green*, 5 Scott, 289: *Lidster* v. *Borrow*, 1 Per. &. D. 447; 9 Ad. & El. 654.]

11. GAMEKEEPER TO KILL GAME, &c.

and upon my said manor, to preserve *or kill* (*b*) the game for my sole use and benefit, and also within the said limits to take and seize for my use all such dogs, nets, and other engines and instruments for the taking or killing of game (*c*), as within the precincts of my said manor of —— shall be used by any person not authorized to kill game for want of

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(*b*) [If the appointment be made by a trustee, it seems that the words in italics should be omitted. See *Webb* v. *Earl of Shaftesbury*, 7 Ves. 488: *Hutchinson* v. *Morritt*, 3 You. & C. 547.]

What is game.

(*c*) [By the stat. 1 & 2 Will. 4, c. 32, s. 2, the word "game" is declared for the purposes of that act to include *hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards*, which are the same animals that are specified as game in the repealed statute, 5 Anne, c. 14, and in the 9 Geo. 4, c. 69, s. 13.]

Stat. 1 & 2, *Will.* 4, c. 32.

being within the same, they shall have been enfranchised or alienated therefrom, to appoint by writing, under his hand and seal, a gamekeeper or gamekeepers to preserve or kill the game over and upon such his lands, and also over and upon the lands in Wales of any other person who, being entitled to kill the game upon such last-mentioned lands, shall by license in writing authorize him to appoint a gamekeeper or gamekeepers, to preserve or kill the game thereupon, such last-mentioned lands not being within the bounds of any manor, &c., or having been enfranchised or alienated therefrom; and it shall be lawful for the person so appointing a gamekeeper or gamekeepers to authorize him or them to seize and take for the use of the person so appointing, upon the lands of which he or they shall be appointed gamekeeper or gamekeepers, all such dogs, nets, and other engines and instruments for the killing or taking of game as shall be used upon the said lands by any person not authorized to kill game for want of a game certificate."

All appointments of gamekeepers to be registered with the clerk of the peace.

Sect. 16. "That no appointment or deputation of any person as a gamekeeper by virtue of this act shall be valid, unless and until it shall be registered with the clerk of the peace for the county, riding, division, liberty, franchise, city, or town, wherever the manor, &c., or the lands shall be situate, for or in respect of which such person shall have been appointed gamekeeper; and in case the appointment of any person as gamekeeper shall expire or be revoked by dismissal or otherwise, all powers and authorities given to him by virtue of this act shall immediately cease and determine."]

[By sect. 36, persons entitled to game, or occupying the lands, or their gamekeepers or servants, are authorized to take game from trespassers.]

[See on the construction of this act Deacon's Game Laws, and Chitty's Burn's Justice, tit. GAME.]

a game certificate (*d*). GIVEN under my hand and seal, this —— day of ——. 11. GAMEKEEPER TO KILL GAME, &c.

[*lord*] L. S.

SIGNED, SEALED, AND DELIVERED, in the presence of }

(*d*) If the lord of the manor be owner or occupier of any river or fishery within the manor, add, LORD OWNER OF FISHERY.

"AND I the said [*lord*] do hereby authorize, appoint, constitute, and empower the said [*gamekeeper*] to demand, seize, take, and keep, for my own use, all and every rod, line, hook, net, and other implement for taking or destroying fish, which he shall find used, or laid, or in the possession of any person or persons whomsoever, fishing in any river or fishery whatsoever within my said manor without my consent." Gamekeeper to seize fishing-nets. 7 & 8 Geo. 4, c. 29, s. 35.

The 3 Edw. 1, c. 1, 2 Inst. 159, enacts, that none, high nor low, by colour of kindred, affinity, or alliance, or by any other occasion, shall course in any park, nor fish in any pond, against the will or leave of the lord or his bailiff. See as to fishery, stat. 7 & 8 Geo. 4, c. 29. [The following passages from Mr. Bythewood's notes on this subject, are retained on account of the incidental information which they contain.] None shall course or fish against the will of the lord.

The *quasi* lord or lady of a *reputed* manor had no power, under any of the repealed acts, to appoint a gamekeeper either to *seize* guns, engines, &c., or to *kill* game. [See now *Bush* v. *Green*, 5 Scott, 289.] Many of the places which are called manors, would not be found to be such in point of law, if the matter were strictly examined. To constitute a manor it is necessary not only that there should be two freeholders within the manor, but *two freeholders holding of the manor, subject to escheats; Glover* v. *Lane*, 3 T. R. 447: *Bradshaw* v. *Lawson*, 4 T. & R. 446: *Rumsey* v. *Walton*, cited there: *Chetwode* v. *Crew*, Willes, 618: but a copyhold manor is not capable of an escheat of a freehold, because that which comes in lieu of another ought to be of the same nature, and then the freehold escheated would be copyhold, which is repugnant and impossible. *Rex* v. *Staverton*, Yelv. 191. [As to what is *primâ facie* evidence of the existence of a manor, see *Doe* d. *Beck* v. *Heakin*, 6 Ad. & El. 495; 2 Nev. & P. 660.] Reputed manors give no right to appoint gamekeepers.

If all the freeholds, except one, escheat or become forfeited to the lord; or if he purchase all the freeholds except one; or if he grant away the services of all the freeholders except one; or release their services to all the freeholders except one; notwithstanding the demesnes and services of the copyholders remain, and although it be known by the name of a manor, yet it is not in law a manor, for want of freeholders, the maintainers and upholders of a Court Baron. But the lord may still hold a court for the copyholders. 4 Co. 26. b.; Co. Cop. sect. 31, Tr. 53: *Vines* v. *Durham*, cited *Sir Moyle Finch's case*, 6 Co. 67. a. Manor extinct for want of freeholders;

GAMEKEEPER.
As to manors.

And although it would cease to be a legal manor, yet it would still be a seigniory in gross. F. N. B. 3, C.; 1 Watk. Cop. 21; 1 Cru. Dig. 52, 2nd Ed ; 3 Bac. Abr. 227, 6th Ed., *Fines*, &c. (B.); Co. Tr. 54. The manor is extinct; because there cannot be a manor unless there be a Court Baron, which is the chief prop and pillar of a manor; Co. Cop. s. 31, Tr. 49; and a Court Baron cannot be held unless there be two suitors at the least; *The King* v. *Staverton*, Yalv. 190, 191; because in a Court Baron the suitors are the judges; Co. Litt. 58. a.; *Melwich* v. *Luter*, 4 Co. 26. b.; 4 Inst. 268; Co. Tr. 51; and not the steward; *Chetwode* v. *Crent*, Willes, 619: *Howard* v. *Wood*, Sir T. Jones, 126; 2 Lev. 245, *S. C.*; and if there be but one suitor, he has no peer, and consequently there is no person to sit in judgment on him in the manor court; *Baldwin* v. *Tudge*, 2 Wils. 20; and therefore when there is but one freehold remaining, the manor is extinct and determined. Bro. Abr. *Comprise*, &c. Pl. 31, 150 b., *Tenures*, pl. 102, *Suite & Contribution*, pl. 17, *Court Baron*, &c. pl. 22; Kitchen on Courts, 4, a. Fr. ed. 7, 4th Ed.

Extinction by separating the services from the demesnes.

So if the lord transfer to a stranger the services of all his tenants, and reserve to himself the demesnes, or if he grant away the demesnes and reserve the services, in both cases the lord has a manor only in name; because in the first case he wants demesnes, and in the other he wants services. Co. Tr. 53; *Sir Moyle Finch's case*, 6 Co. 64. a.: *The King* v. *The Bishop of Chester*, Skin. 661; 1 English Copyholder, 379. After a partition of the demesnes and services, either by joint tenants, tenants in common, or coparceners, it seems that they may hold *one* joint Court Baron, and consequently may jointly appoint gamekeepers. *Vide infra*, Vol. 6, p. 589.

The *prescriptive* rights of a reputed manor remain.

Although a manor exist only by reputation, yet nevertheless all its *prescriptive* rights remain; such as the right to wrecks, estrays, &c.; and if there be but one freehold tenant, the seigniory and services to him remain. The power to appoint a gamekeeper, however, is not a prescriptive right. Yet Mr. Chitty, in his treatise on the Game Laws, Vol. I, 25, says, "It should seem that a manor by reputation, but which has ceased to be a legal manor by defect of suitors, may yet retain its *privilege as a preserve for game*, and might authorize the lord to appoint a gamekeeper. *Soane* v. *Ireland*, 10 East, 259, *sed quære*." This opinion, however, cannot be supported as to the old act, which gave the power only to "lords of manors," who had no such power at common law, and therefore the person entitled to exercise that power must have fully answered the words of the act. Moreover, *Soane* v. *Ireland*, cited by Mr. Chitty, is not in point; for the question in that case was, whether an allegation in a declaration, that A. was seised of the manor of F., and that he and all those whose estate he has in the said manor, have immemorially appointed a *sexton* of the parish of F., is sustained by proof of his seisin of a *quondam* manor, which had ceased to be a legal manor by defect of freehold tenants, and existed only by reputation; in which case Lord *Ellenborough* said, if F. were once a manor, as it appeared, this *prescriptive* right would still belong to it, though other manorial rights, such as that of holding courts, for want of freehold tenants, might be gone and severed from it. It would still be a manor by reputation for this purpose, which will satisfy the allegation; and it was not necessary to prove it a continuing manor for all purposes.

Soane v. *Ireland*, 10 East, 259. [But see *Blunt* v. *Grimes*, 4 T. R. 682: *Tyrwhitt* v. *Wynne*, 2 B. & Al. 560: *Doe* d. *Gore* v. *Langton*, 2 B. & Ad. 695: *Bush* v. *Green*, 5 Scott, 289. The present act extends to lords of manors, &c., *in reputation* merely.] GAMEKEEPER.

No lord or lady of a manor, *under the degree of an* ESQUIRE, could appoint gamekeepers to *seize* guns, nets, and other engines used for the destruction of game, under the 22 & 23 Car. 2, c. 25, s. 2, whatever the estate might be; for no landed estate, however large, will confer the title, as the term *esquire* has no relation whatever to landed property; but it must be acquired either by office, the King's patent, or some of the means laid down by Selden and Camden. A lord of a manor is certainly not an esquire by virtue of his manor or royalty, though in common acceptation he is considered as such. Per *Willes*, J., *Jones* v. *Smart*, 1 T. R. 50, in opposition to a very loose *dictum* of his own, in *Mallock* v. *Eastly*, 7 Mod. 488. No lord of a manor *under* the degree of an esquire can appoint gamekeepers to *seize* engines, &c.

ESQUIRES in law, and properly so called, are the sons of all the peers and lords of Parliament, in the lives of their fathers; 2 Inst. 667; 2 Vin. Abr. 84, pl. 28; the eldest sons of the younger sons of peers, and their eldest sons, in perpetual succession; Judge Doderidge's Nobility, 144, (the second, for after page 170, the next page is numbered, by mistake, 105); Selden's Tit. Honour, 342; and, consequently, the younger sons of peers, after the death of their fathers. Cowell's Interpreter, *Esquier*. All the noblemen of other nations, and Scotch and Irish peers, if they be not knights. 3 Selden's Works, 848; 2 Inst. 667. The eldest sons of baronets; Cow. *ut supra;* the eldest sons of knights; 2 Inst. 596, 667; Wood's Inst. 45, 10th Edit.; and their eldest sons for ever. Dod. Nobility, 144; Selden's Tit. Honour, 342, Edit. 1614. Esquires created expressly, with a collar of SS. and spurs of silver; Spelman's Glossary, *verbo Armigeri*, 3 Selden's Works, 853-4; Tit. Honour, 342: of which, at present, there are none. Persons to whom the King gives arms by letters patent, with the title esquire, and their eldest sons for ever. Seld. Tit. Hon. 343; Com. Dig. *Dignity*, (B. 8). Esquires of knights of the bath, each of whom formerly constituted *two* at his installation; 3 Selden's Works, 851; Byshe's Upton de Studio Militari, 21; 1 Dugdale's Antiquities of Warwickshire, 708, Appendix; Stuart's View of Society in Europe, 433, 2nd Edit.; Anstis's Historical Essay upon the Knighthood of the Bath, 66, 72, 99, Edit. 1725; Stow's Annals, 899; but the number now is *three;* for by the statutes of the Order of the Bath, sect. 15, 23 May, 11 Geo. 1, at which time the order was revived, each knight is required to have at his installation one young esquire, and two esquires governors; all of whom have the same rights and advantages as gentlemen of the privy chamber: and it is by the same section declared, that the eldest son of every of these esquires shall have and use the addition and title of esquire in all acts, proceedings, and pleadings. Statutes of the Order of the Bath, p. 32. Barristers at law, by their office or profession. Spelm. and Cow. *ut supra: Messor* v. *Molyneux*, cited 1 Wils. 245. Justices of the peace, while in the commission, but no justices of the peace of corporate towns, &c. Cow. *ut supra: Rex* v. *Brough, Mayor of Hedon*, 1 Wils. 244. Persons chosen esquires to the body of the prince; Selden's Tit. Honour, 342; Judge Doderidge's Nobility, 144, *ut supra;* of which, at present, Who are esquires.

GAMEKEEPER.

Who are Esquires.

there are none, their place being supplied and rendered unnecessary by means of a standing army. Persons attending upon the King's coronation in some employment, or persons employed in any superior office in the kingdom, or serving in some place of better note in the King's household. Dod. Nobility, 144-5; Seldon's Tit. Honour, 343. And it has been *supposed*, that all who bear an office of trust under the Crown, and who are styled esquires by the King in their commissions and appointments; as they are once honoured by the King with the title of esquire, they have a right to that distinction *for life:* Christian's note, 1 Bla. Com. 406 (19); such, for instance, as sheriffs of counties, or captains in the army or navy; Christian's Game Laws, 132. Notwithstanding the 44 Geo. 3, c. 54, s. 26, enacted, that all officers in corps of volunteers, having commissions from lieutenants of counties, should *rank* with the officers of his Majesty's regular forces, yet a commission signed by the lord lieutenant of a county, and announced in the Gazette, constituting a person captain commandant of a corps of volunteer infantry, and styling him an *esquire*, does not create such a person an esquire, because the lord lieutenant cannot confer honours; and the Court said there was no pretence to call such a gentleman an esquire. *Talbot* v. *Eagle*, 1 Taunt. 510. Although, according to Mr. Serjt. Lens's opinion, 2 Burn's Justice, Chetwynd's Ed. 505, that "the eldest son of a clergyman is not as such qualified under any of the descriptions of the statute 22 & 23 Car. 2, c. 25, s. 3; and that it makes no difference in this respect that the father is a Master of Arts in an English university, and in the commission of the peace:" still it seems that a clergyman in the commission of the peace, lord of a manor, would have been considered as not being *under the degree* of an esquire, according to the description in the repealed statute. The ground of the learned Serjeant's opinion perhaps is, that such a clergyman is neither an esquire, nor a "person of *higher* degree."

Clergymen.

Ladies of manors.

As married women and widows are entitled to the same rank among each other, as their husbands would respectively have borne between themselves, except such rank be merely professional or official, and unmarried women to the same rank as their eldest brothers would bear among men, during the lives of their fathers, 1 Bla. Com. 406, n., it seems that these ranks must be the criterion by which to judge, whether, as ladies of manors, they were enabled to appoint gamekeepers to *seize* engines, &c. *Willes*, C. J., appears to have mistaken the words of the statute, when he says, a lady of a manor cannot bear the title required by the statute of Charles the Second. *Mallock* v. *Eastly*, 7 Mod. 488. The daughter of a peer, the widow of a knight, &c., are not under the degree of an esquire, and, most clearly, under the statute of Charles the Second, they had authority to appoint a gamekeeper to seize engines, &c.

The lord of a manor cannot authorize another person to appoint a gamekeeper.

The person to appoint a gamekeeper under the recent act must (except as to Wales) be *dominus pro tempore;* for under the rule *delegatus non potest delegare*, a man cannot give or convey to another the power of appointing a gamekeeper, without a conveyance also of the manor itself. Such a power is a mere emanation of the manor, &c., and inseparable from it. It is a mere shadow, accompanying the substance. *Colcroft* v. *Gibbs*, 5 T. R. 20.

FISHERIES.

GAMEKEEPER.

In rivers not navigable the proprietors of the land have the right of fishery on their respective sides; and it generally extends *ad filum medium aquæ*. But in navigable rivers the proprietors of the land on each side have it not: the fishery is common; it is, *primâ facie*, in the King, and is public. If any one claims it exclusively, he must show a right. If he can show a right by prescription, he may then exercise an exclusive right; though the presumption is against him, unless he can prove such a prescriptive right. Therefore he may have an exclusive privilege of fishing, even in an arm of the sea; such a right shall not be presumed, but on the contrary, *primâ facie*; but it is capable of being proved. *Carter* v. *Murcot*, 4 Burr. 2164: *Rex* v. *Wharton*, 12 Mod. 510: *Lord Fitzwater's case*, 1 Mod. 106: *The Corporation of Orford* v. *Richardson*, 4 T. R. 437. [J. A grant of a several fishery passes nothing but the liberty of fishing, and not the ownership in the soil; being therefore an incorporeal and not a territorial hereditament, it cannot be granted even for a term of years without deed. Co. Litt. 4. b.; *Duke of Somerset* v. *Fogwell*, 5 B. & Cr. 875. And see *post*, Vol. 4, p. 664. But it should seem that where the owner's claim is founded on prescription, and the terms of the grant are not known, it would be presumed that he was the owner of the soil. 5 B. & C. 886. J.]

Who have the right of fishing in rivers.

Grant of a several fishery does not pass the soil.

See further, stat. 7. & 8 Geo. 4, c. 29; Com. Dig. *Justices of the Peace*, (B. 44); 2 Burn's Justice, 860, 28th Ed.; *Fish and Fisheries*, I.; 3 Edw. 1, c. 1; 2 Inst. 152.

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12. DEPUTATION *of a person as* GAMEKEEPER *to kill Game for* HIS OWN USE, *or for the use of A. B.* (*a*).

12. DEPUTATION OF GAMEKEEPER.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I [*lord*], of ——, in the county of ——, esquire, lord of the manor of ——, in the county of ——, *Send Greeting*. KNOW YE, that I the said [*lord*] do hereby authorize, appoint, constitute, and empower [*gamekeeper*], of ——, in the county of ——, (yeoman, *or* labourer, &c.), to be gamekeeper of and within my said manor of ——, and all the royalties, rights, members, and appurtenances thereto belonging, during my pleasure, with full power, license, and authority as gamekeeper to kill game within the same for his own use, or the use of any person whomsoever, (*or*, for the sole use of A. B., of &c.), and also to seize and take for his own use, within the said limits,

(*a*) [See stat. 1 & 2 Will. 4, c. 32, s. 14; *ante*, p. 549.]

12. DEPUTATION OF GAMEKEEPER.

all such dogs, nets, and other engines and instruments for the killing or taking of game, as shall be used within the said limits, by any person not authorized to kill game for want of a game certificate. AND FURTHER, I do hereby give and grant unto him the said [*gamekeeper*], during my pleasure, full power and authority to do all and every other act and acts, thing and things, which in any way appertain or belong to the office of a gamekeeper, for the doing of which this shall be his sufficient warrant. IN WITNESS whereof, I the said [*lord*] have hereunto set my hand and seal, the —— day of ——, 18— (*b*).

SIGNED, SEALED, AND DELIVERED in the presence of }

Stamp.

(*b*) Stamp one pound fifteen shillings. 55 Geo. 3, c. 184. [And the deed must be registered with the clerk of the peace for the county. *Ante*, p. 550.]

13. GAMEKEEPER IN WALES.

[13. APPOINTMENT *of a* GAMEKEEPER *in* WALES, *by a Person qualified, under the stat.* 1 & 2 *Will.* 4, *c.* 32, *s.* 15, *to make such Appointment.*

Statement of qualification.

KNOW ALL MEN BY THESE PRESENTS, that I [*appointor*], of &c., in the principality of Wales, being entitled to kill the game upon all those lands called &c., situate &c., which lands are of the clear annual value of £500, and whereof I am seised of an estate in fee-simple, (*or*, whereto I am beneficially entitled in my own right for an estate in fee-simple), and which lands are not within the bounds of any manor, or lordship, or royalty, (*or*, have been enfranchised or alienated from the manor of ——, within the bounds whereof the same

Appointment of gamekeeper.

are situate), do nominate, appoint, and authorize [*gamekeeper*], of &c., to preserve and kill the game over and upon the said

As to lands of A. B.

lands, [and also over and upon all &c., now in the occupation of [*occupier*], which lands are not within the bounds of any manor, lordship, or royalty, (*or*, have been enfranchised or alienated from the manor of ——, within the bounds whereof the same are situate), and to preserve or kill the

game upon which lands the said [*occupier*], being entitled thereto, has, by license in writing, authorized me to appoint a gamekeeper], for my sole use and benefit, with full power and authority to seize and take &c. (*ut ante*, p. 550).]

13. GAMEKEEPER IN WALES.

14. APPOINTMENT *by the Owner or Occupier of a* FISHERY *of a Person to seize Nets, &c.* (*a*).

14. GAMEKEEPER TO SEIZE FISHING NETS.

I ——, of ——, in the county of ——, gentleman, (*&c.*) the owner (*or* occupier) of the river or fishery called or known by the name of ——, situate in the parish of ——, in the county of ——, by these presents do authorize, appoint, constitute, and empower —— of ——, in the county of ——, labourer (*or* yeoman), to demand, seize, take, and keep, for my own use, all and every rod, line, hook, net, and other implement for taking or destroying fish, which he shall find used or laid, or in the possession of any person or persons whatsoever fishing in the said river or fishery, or any part thereof, without my consent. As WITNESS my hand &c.

WITNESS.

(*a*) [This appointment, not being made under any statute, requires neither seal nor stamp. See stat. 7 & 8 Geo. 4, c. 29, s. 35.]

15. LEASE *of* MANORS *for the purpose of enabling the Lessee to depute* GAMEKEEPERS (*a*).

15. LEASE TO ENABLE LESSEE TO APPOINT GAMEKEEPERS.

THIS INDENTURE, made &c., BETWEEN [*lessor*], of &c., esquire, and [*wife*] his wife, (late [*maiden name*], spinster, and devisee for life of the manors hereinafter mentioned, and intended to be hereby demised, under and by virtue of

Parties.

Reference to

(*a*) *Vide ante*, p. 554.

15. LEASE TO ENABLE LESSEE TO APPOINT GAMEKEEPERS.

will whereby wife of lessor is tenant for life of manors demised.

Testatum.

Demise by husband and wife of

Manors, royalties, &c.

(*except* the right of holding courts).

Habendum for a year, and from year to year until notice.

Reddendum.

Covenant by lessee to pay rent;

the last will and testament of [*testator*], late of ——, esquire, her late father deceased), of the one part; and [*lessee*], of &c., esquire, of the other part. WITNESSETH, that in consideration of the rent hereinafter reserved and made payable by the said [*lessor*], and for the purpose of enabling him the said [*lessee*], and others by his command or appointment, to hunt, shoot, fowl, fish, and to preserve the game, in, over, and through the several manors, hereinafter demised, but not further or otherwise, or for any other purpose, or pecuniary benefit, or extension of right, *They* the said [*lessor*] and [*wife*], his wife, by these presents, *do* and each of them *doth* demise, set, and to farm let unto the said [*lessee*], his executors, administrators, and assigns, ALL THOSE the several manors, &c.; *Together* with all the rights, royalties, privileges, and appurtenances to the same respectively belonging; *Save and except* the right of holding by appointment or otherwise, any courts leet, courts baron, or other courts; and all benefit or advantage to arise therefrom, in respect of the same manors respectively. TO HAVE AND TO HOLD the same manors (except as aforesaid) unto the said [*lessee*], his executors, administrators, and assigns, from the twenty-fifth day of March now last past, for and during and unto the full end and term of one whole year thence next ensuing, and fully to be complete and ended; and so forward, from year to year, until six month's notice in writing shall be given by either or any of the said parties to the other or others of them, of his, her, or their intention to determine this present demise, on the twenty-fifth day of March then next ensuing. YIELDING AND PAYING therefor, yearly, and every year during the continuance of this demise, unto the said [*lessor*] and [*wife*], his wife, or the person or persons for the time being entitled to the same, the yearly rent or sum of £——, by equal half-yearly payments on the twenty-fifth day of March and on the twenty-ninth day of September in each year; the first payment thereof to be made at or upon the twenty-ninth day of September next ensuing the date of these presents. AND THE SAID [*lessee*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*lessor*], his executors, administrators, and assigns, that he the said [*lessee*], his executors, administrators, or assigns, or some or one of them, will or shall pay unto the said [*lessor*] and [*wife*], his wife, or other the person or persons for the

time being entitled to the same, the yearly rent or sum of £—— hereby reserved, at the times and in manner aforesaid; AND ALSO will or shall bear, pay, and discharge all and all manner of taxes, rates, and assessments whatsoever, parliamentary, or parochial, which are or shall be taxed, charged, or imposed upon all or any of the said manors, or upon any person or persons for, or in respect of the same (the land-tax only excepted). AND THE SAID [*lessor*], in consideration of the rent, and a due performance of the covenant last mentioned on the part of the said [*lessee*], for himself, his heirs, executors, and administrators, and for the said [*wife*], his wife, doth hereby covenant with the said [*lessee*], his executors, administrators, and assigns, that they the said [*lessor*] and [*wife*], his wife, will and shall, at all times during the continuance of this demise, at the request and proper costs and charges of the said [*lessee*], his executors, administrators, or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all such further and other lawful and reasonable acts for the further and better, more perfectly and absolutely, demising, assuring, and confirming the same manors unto the said [*lessee*], his executors, administrators, or assigns, according to the true intent and meaning of these presents. IN WITNESS &c.

15. LEASE TO ENABLE LESSEE TO APPOINT GAMEKEEPERS.

and all taxes, &c. upon manors.

Covenant by lessor for himself and his wife for further assurance.

16. APPOINTMENT *of a* GUARDIAN (*a*) *by an Infant.*

16. GUARDIAN.

KNOW ALL MEN BY THESE PRESENTS, *That* I [*infant*], of ——, in the county of ——, daughter of ——,

(*a*) The right of making a guardian by election of the infant himself only arises, when, from a defect of law, the infant finds himself wholly unprovided with a guardian. Harg. n. Co. Litt. 88. b. (16).

On guardianship by election.

For the purpose of ascertaining when the infant may exercise this right, it will be requisite to state a few particulars concerning the different kinds of guardianship.

Different kinds of guardianship.

Guardianship by *socage* springs wholly out of *tenure;* and therefore the title to it cannot arise, unless the infant be seised of [a legal estate in, *Rex* v. *Inhabitants of Toddington*, 1 Barn. & Ald. 560.], lands, or other hereditaments lying in tenure, holden by socage, as most of the

Guardian in socage;

16. GUARDIAN. late of —— aforesaid, deceased, and of —— his wife, since also deceased), being of the age of fourteen years and up-

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lands in England now are*. It takes place on a *descent* only, *Quadring* v. *Downs*, 2 Mod. 176, and the title to it is in such of the infant's next of *blood* as cannot have the socage estate, in respect of which the guardianship arises, by descent: Bract. 876; Co. Litt. 87. b. [J. Thus, if the lands have descended to the infant from his father or any paternal relation, his mother, if living, will be his guardian in socage; (see *Rex* v. *Sutton*, 5 Nev. & M. 353); she not being competent to inherit them. If the infant has no mother, then his next maternal relation will be his guardian. In looking round, however, amongst the infant's next of kin for a guardian, it must be borne in mind that the rent statute of inheritance, 3 & 4 Will. 4, c. 106, (stated *ante*, Vol. 1, p. 144), has let in relations of the half-blood, and thereby incapacitated them to become guardians in socage. The descent, however, is still traced as formerly from the last purchaser: and therefore, in the case first supposed of a descent from the father, or any other paternal relation, the mother could not inherit, though lineal ancestors are by the statute rendered competent to inherit, she not being of the blood of the first purchaser.J.] See *Carill* v. *Cuddington*, Plowd. 299. Where there are two relations of equal degree, the male or the elder relation is preferred. Harg. Co. Litt. 88. b. An infant not being liable to account, (*Oliver* v. *Woodroffe*, 4 Mee. & W. 650), cannot be guardian in socage. See Co. Litt. 88. b. Guardianship in socage ends, when the infant, whether male or female, attains fourteen, Hargr. n. Co. Litt. 88. b. (13); 3 Atk. 624; 1 Ves. sen. 91; even although the father be guardian on a maternal, or the mother on a paternal descent. Litt. s. 123. The heir may then elect a guardian, *Mendes* v. *Mendes*, 3 Atk. 624; 1 Ves. sen. 91: *Ex parte Watkins*, 2 Ves. sen. 470; see *Id.* 375: and at law he is then entitled to occupy the lands himself if he will, and call his guardian to account, although his own parent; Litt. s. 123; for the father or other ancestor, being guardian in socage, shall account with the infant for the profits; otherwise it would be more for the infant's advantage to have another person for his guardian; Co. Litt. 88. b.; 3 Bac. Abr.

by nurture; 404 (*a*). Guardianship by *nurture* only occurs where the infant is without any guardian; and none can have it except the father or mother. It extends no further than the custody and government of the infant's *person*, and determines at fourteen, in the case both of males

by nature; and females. Bro. Abr. *Garde*, pl. 70. Guardianship by *nature* is more extensive; for not only the father and mother, 2 Atk. 15, but every other ancestor may be guardians by nature, though with considerable differences, such as denote the superiority of the father's claim. The father has the *first* title to guardianship by nature, the mother the

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* [As to guardianship by custom, see 2 Watk. Cop. 96; 1 Scrip. Cop. 66, 471; Robinson on Gavelkind, 237. As to the custom of London, which is now obsolete, see *Frederick* v. *Frederick*, 1 P. Wms. 710; Com. Dig. Guard. (G. 4.): *Rutter* v. *Rutter*, 1 Vern. 180.]

wards, *have* elected, chosen, nominated, and appointed; *And* by these presents *do* elect, choose, nominate, and appoint, 16. GUARDIAN.

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second; and as to other ancestors, if the same infant happens to be heir apparent to two, as to both a paternal and a maternal grandfather, perhaps in this equality of rights, priority of possession of the infant's person may decide the preference, according to the general rule, in *æquali jure melior est conditio possidentis*. Plowd. 296. This guardianship extends no further than the custody of the infant's *person;* Carth. 386: *Rex* v. *Sherrington*, 3 B. & Ad. 714: *Villareal* v. *Mellish*, 2 Swanst. 536; which it yields to the guardian in socage, until the infant attains fourteen; but guardianship by nature continues till the infant attains the age of twenty-one. Hargr. n. Co. Litt. 88. b. (12); 3 Bac. Abr. 404. However, the proper age to apply to the Court of Chancery to remove a parent from being guardian, in a male is fourteen, in a female twelve; but the Court will never do it without some misbehaviour in the parent. *Roach* v. *Garvan*, 1 Ves. sen. 158. [J. As to the parental right to the guardianship and custody of infants, see the much-discussed case of *Wellesley* v. *Duke of Beaufort*, 2 Russ. 1; 2 Bligh, N. S., 124; 1 Dow, 154: *Ball* v. *Ball*, 2 Sim. 35. J.] [See also *Rex* v. *Greenhill*, 4 Ad. & El. 624: *Rex* v. *Joley*, 5 Ad. & El. 441: *Ex parte Bailey*, 6 D. P. C. 311; stat. 2 & 3 Vict. c. 54: *Talbot* v. *Earl of Shrewsbury*, 4 Jurist, 380; *Re Taylor*, 4 Jurist, 959, 983.] By virtue of the 12 Ch. 2, c. 24, s. 8, the *father*, although under twenty-one, may by deed, or [if of age by] will, appoint who shall be guardians of his children after his decease, until they attain twenty-one, or for any less period; and thereby he will disappoint the mother and other ancestors of the guardianship by nature, [*Talbot* v. *Earl of Shrewsbury*, 4 Jurist, 380]; and the next of blood of the guardianship by socage. [The *testamentary* power of appointing guardians of their children given by this statute to *minors* has been taken away by the stat. 7 Will. 4 & 1 Vict. c. 26, s. 7; see sect. 1. Although a *deed* of appointment of guardianship under this act is revocable, and has been said to be of a testamentary character, and revocable by will, (*Earl of Shaftesbury* v. *Lady Harman*, Finch, 323: *Lecone* v. *Sheires*, 1 Vern. 442); yet as the act has itself drawn a distinction between a deed and a will, and as it has been held that a mere appointment of a guardian, though in a testamentary form, is not a subject of probate, (*Lady Chester's case*, Vent. 95; *Ex parte Earl of Ilchester*, 7 Ves. 364: *Gelliat* v. *Gelliat*, 3 Phill. 222), it seems that an infant may still appoint a guardian of his children by deed.] This kind of guardian has the custody not only of the lands descended or left by the father, but of all lands and goods any way acquired or purchased by the infant, which the guardian in socage had not. *Bedell* v. *Constable*, Vaugh. 178, 185, 186; 2 Fonbl. Treat. Equity, 225, 5th Edit.; 2 P. Wms. 102.

by the father's appointment. 12 Car. 2, c. 24, s. 8.

Appointment by will.

[Although this power of appointing guardians does not extend to infant children, married at the father's death; yet if they are then unmarried, the guardianship is not afterwards determined by marriage, *Earl of Shaftesbury's case*, cit. 3 Atk. 625. The statute has been held not to interfere with the lord's right to the guardianship of his infant

16. GUARDIAN. [*guardian*] of ——, aforesaid, guardian of my person and estate, until I shall attain the age of twenty-one years.

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copyhold tenant. *Clench* v. *Cudmore*, 3 Lev. 395. A Jew may appoint a guardian under this statute. *Villareal* v. *Mellish*, 2 Swanst. 533.]

An infant above seven, having no guardian, may elect one.

The right to elect a guardian may therefore happen *before* fourteen, when the infant, whether male or female, Co. Litt. 88. a., has no such property as attracts a guardianship by tenure, 2 Fonbl. Eq. 225, 5th Edit., and the father is dead, without having executed his power of appointing a guardian for his child, and there is no mother; but if the child be of such tender years that he can make no choice, that is, under seven years of age (see Fitzgib. 164), then the next of kin, to whom the inheritance cannot descend, should have the custody of him, (Co. Litt. 87. b.); until a guardian be properly appointed by the Lord Chancellor, or by the infant himself. Or the right of making a guardian by election may happen *after* fourteen, when the custody of the guardian by socage terminates, and in case of the father's decease, from the want of his appointment, there is no other guardian ready to succeed to the trust, and to take care of the infant or his property. Hargr. n. Co. Litt. 88. b. (16); 1 Bla. Com. 426. And therefore, a minor, after fourteen, although freed from custody, is at liberty, if willing, to put himself a second time under guardianship, until he is of full age. But if a minor, being an adult, does not consent to receive a new guardian, then no court would appoint a guardian, unless *ad litem*. Harris's n. Just. Inst. lib. i. tit. xxiii. s. ii. Formerly, in case an infant was of the years of discretion, namely, fourteen, any payment made to him would have been good; for at that age the law held him able to govern and manage his own lands in socage, and consequently to receive the rents thereof. Wentworth's Office of Executor, 219, Wilson's Ed.; 1 Powell's Swinb. on Wills, 295, par. iii. s. 14. So, formerly an infant could be an executor at seventeen; but since the 38 Geo. 3, c. 87, s. 6, he cannot act till he is twenty-one, and where he is sole executor, administration with the will annexed must be granted to his guardian, or to such other person as the spiritual court shall think fit, until the infant attains twenty-one, at which period probate of the will may be granted to him. The power of an infant has been gradually restrained, and he is now thought to stand in need of a guardian of his person and property until twenty-one. See 2 Watk. Cop. 99. As Lord *Coke* mentions the right of choosing a guardian by a male ward in socage *after* fourteen, Co. Litt. 78. b., even in his time a guardian must have been deemed necessary after that age. But it is remarkable that he omits mentioning it in the case of a female *after* fourteen. However, since the 12 Car. 2, c. 24, s. 8, it has been usual, for want of a guardian by the father's appointment, to allow infants, whether males or females, 1 Bla. Com. 463; and whether heirs or not, (see Harg. n. Co. Litt. 88. b. (12)), to elect guardians for themselves. [J But the appointment of a guardian by the infant himself, even after the age of fourteen, does not exclude the jurisdiction of the Court; and therefore, where a petition for the appointment of a guardian to an infant was resisted on the ground that the infant, who was of the age of seventeen, had by deed appointed a guardian

Power of infants over their property.

Infant's appointment of guardian does not exclude the jurisdiction of the Court.

AND I do hereby promise to be ruled and governed by him in all things touching my welfare. AND I do hereby autho- 16. GUARDIAN.

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for himself, Sir *J. Leach*, V. C., referred it to the Master to consider a proper person, observing, that the infant's appointment would not supersede the duty and authority of the Court. *Curtis* v. *Rippon*, 4 Madd. 462.[5]]

Lord *Coke* omits stating how, and before whom the election should be made; nor does it appear that any prior or cotemporary writer supplied the defect. Lord *Hardwicke* said, it was frequently done before a judge on circuit, and that it was the constant practice to allow infants to choose their guardian, and what the Court of Chancery frequently called on infants to do; though he said this still is liable to any reasonable objection made to such choice; 2 Ves. sen. 375; and see *Savill* v. *Slingsby*, Tothill, 15, where an attachment issued against an infant to make him choose a guardian; see also Wyatt's Prac. Reg. 213, 223; Finch. Rep. 476; but it is not requisite that the election should be made before a judge. Harg. n. Co. Litt. 88. b. (16); 3 Atk. 624; Harr. n. Just. Inst. lib. i. tit. xxiii. s. ii. The last Lord Baltimore, when he was turned of *eighteen*, having no testamentary guardian, and being under the necessity of having one for some special purposes relative to his proprietary government of Maryland, named a guardian by *deed*. This mode was adopted by the advice of two eminent barristers; for though one of them at first doubted whether the administration of the government of the province was not devolved upon the Crown during the infancy, yet he afterwards concurred in thinking that the guardian named by the infant might act as lord proprietor. Indeed, it seems as if there was no prescribed form of an infant's electing a guardian after fourteen, any more than there is before; and, therefore, the learned Hargrave says, election by *parol* might perhaps be sufficient; though, he says, it would be wrong to trust to a mode so unsolemn. Hargr. n. Co. Litt. 88. b. (16). The form drawn by the celebrated conveyancer, Sir Orlando Bridgman, is under hand and seal. 1 Bridgman's Conveyances, 249, 5th Ed.: and in the present day, the appointment or election is generally also delivered as a deed; and therefore the duty of thirty-five shillings becomes chargeable on it, "as a deed not otherwise charged," under the last stamp act. But it seems that an appointment under hand and seal, without being delivered as a deed, would be equally effectual; and, unless it be delivered as a deed, a stamp would not be requisite. *Vide post*, tit. ARBITRATION.

The election is usually made by deed.

But a deed does not appear to be requisite.

The guardian appointed by a male infant after he is fourteen, continues till he is twenty-one: 3 Bac. Abr. 403; 4 Ibid. 138; and does not determine by his marriage. *Mendes* v. *Mendes*, 3 Atk. 625. So, likewise a guardian appointed by a female infant after she is fourteen, continues till she is twenty-one, unless she previously marry; for on marriage every kind of guardianship as to a female ceases, *Mendes* v. *Mendes*, 1 Ves. sen. 91, because the husband, immediately on the marriage, becomes her guardian; and it would be inconsistent that she should at the same time be under the power of another guardian, 3 Bac. Abr. 413. However, where a female eleven years of age was sent

The guardian of a male infant continues till 21;

of a female, till 21, or marriage.

16. GUARDIAN. rize (*b*) and empower the said [*guardian*] to sue for, recover, and receive for my use and benefit, all and every the

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(*b*) Sometimes the appointment of a guardian by an infant authorizes the making of leases, &c.; yet, as appears above, the guardian does not derive his authority from the infant, but from the law, it seems better to omit the enumeration of any particular act which he is to do. The remainder of the above form is subject to the same observation, and is liable to another objection; for it is in the nature of a power of attorney, and an infant cannot appoint an attorney, Perk. s. 13; 2 Inst. 483; 2 Roll. Abr. 2 (E) pl. 4; 3 Bac. Abr. 598, Gwill. Ed. *Infancy* (I) 3; excepting to receive livery of seisin, 1 Roll. Abr. 730 (D) 6; but as the whole form is used by some gentlemen, it has therefore been inserted. For the above-mentioned reason, the subsequent forms seem preferable, and they certainly are more generally used.

The appointment of a guardian should be general.

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to France for her education, and being intrusted to the care of a banker at Paris, he married her to his own son, who was not then seventeen years of age, Lord *Hardwicke* held, that, though the Court of Chancery cannot appoint a guardian of a female after marriage, yet it will not determine a guardianship, or discharge any order made for a guardian because of a marriage. *Roach* v. *Garvan*, 1 Ves. sen. 159.

Whether appointment under 14 continues after that age.

It does not appear to be certain whether an appointment of a guardian by an infant above the age of seven, and under the age of fourteen years, continues after the infant has attained fourteen; but it seems that it continues for the same period as it would if it had been made after fourteen. To avoid this doubt a ratification of the appointment has sometimes been recommended after the infant arrives at the age of fourteen years, *ut infra*, 573. In which case, if the ratification be delivered, it operates as a new deed, and becomes chargeable with another thirty-five shilling stamp. But as to the necessity for delivery, and a stamp, the observations in the preceding page are here equally applicable.

Stamp.

Guardianship not transferable or transmissible.

Neither a guardian in socage, Hargr. n. Co. Litt. 88. b. (13); 90. b. (1); *Bedell* v. *Constable*, Vaugh. 181; nor a testamentary guardian, *Mellish* v. *De Costa*, 2 Atk. 14; [*S. C.* better reported, nom. *Villareal* v. *Mellish*, 2 Swanst. 533]; nor consequently a guardian by election, can assign or transfer the guardianship to another; neither will it, upon the guardian's death, go to his executors or administrators, nor to the husband of a deceased wife, but it determines. Vaugh. 185: *Eyre* v. *Countess of Shaftesbury*, 2 P. Wms. 121; 1 Woddes. Lec. 458. And in case a guardian in socage die, the guardianship shall go to the next of kin of the infant to whom the inheritance cannot descend. 2 Inst. 260. For though the office of guardian be an interest, yet it is an interest joined with a trust and confidence personally reposed in the guardian himself, either by the law, or by the person appointing him, wholly for the infant's benefit, and not in any respect for the guardian's profit.

When there are two or more

Shoplane v. *Roydler*, Cro. Jac. 99; Vaugh. 183; Plowd. Com. 293. But it seems that, if two or more are made guardians, and one of them dies,

sums and sum of money to which I am, or may be entitled, on any account whatsoever; *And* on receipt thereof, or of

16. GUARDIAN.

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the survivor or survivors will continue guardians; *Eyre* v. *Countess of Shaftesbury*, 2 P. Wms. 104; for, from the nature of the thing, the authority must be joint and several; and were it otherwise, the more guardians were appointed for the security of the infant, the less secure would he be, because, upon the death of any one of them, the guardianship would be at an end. 2 P. Wms. 107, 121; 3 Bac. Abr. 407. However, it is usual to expressly appoint the survivors and survivor, guardians and guardian, *ut infra*, 410. [J. Where several persons are appointed guardians by the Court of Chancery, the office does not survive; *Bradshaw* v. *Bradshaw*, 1 Russ. 528; but the Court will re-appoint the survivors, without a reference to the Master. *Hall* v. *Jones*, 2 Sim. 41. J.]

guardians the office survives.

Some of the purposes for which a guardian by election is appointed while the infant is under fourteen, and has no guardian, are for enabling the guardian to make leases of the infant's lands, in which he has only an equitable estate, or in which, although he has the legal estate, yet he took them not by descent, but by purchase; for in neither of these cases is guardianship in socage attracted. *Rex* v. *Toddington*, 1 B. & Al. 560: *Quadring* v. *Downs*, 2 Mod. 176. But if the infant has any such lands as attract guardianship in socage, that is, lying in tenure, then the guardianship in socage attracts the custody of the infant's hereditaments not lying in tenure, and of his copyhold estates, unless there is either a special custom for the lord's appointing a guardian of them, Hargr. n. Co. Litt. 88. b. (13), or by the peculiar custom of the manor, the copyhold may by possibility descend to the guardian in socage; 2 Watk. Cop. 102; and the guardian in socage is also, it seems, entitled as well to the custody of the infant's equitable estates in lands, of which there is no trustee expressly appointed, as of those lands which he took by purchase. However, as to leases made by a guardian by election before fourteen, the books are silent.

Guardianship by election, for making leases.

Guardianship in socage extends to what.

Guardian of copyholds.

When, after fourteen, an infant is destitute of a guardian, he sometimes appoints one by election, principally to enable him to make leases of all the infant's lands. As to leases by this guardian, the books are clear; for it is said, the guardian before fourteen (that is, in socage), as well as he whom the infant thinks fit to choose after fourteen, are both of the same nature, and have the same office and employment assigned to them by the law, without any intervention or direction of the infant himself; for they were therefore appointed because the infant, in regard of his minority, was supposed incapable of managing himself and his estate, and consequently they derive their authority not from the infant, but from the law; and that is the reason they make leases, grant copies of court-roll, *Shoplane* v. *Roydler*, Cro. Jac. 99, make distress for rent of the infant's lands, Bradby on Distresses, 91, and transact all affairs in their own name, and not in the name of the infant, as they would be obliged to do if their authority were derived from him. 3 Bac. Abr. 403; 4 Id. 138, Gwill. Ed. *Guardian* (A), *Leases* (I) 9. And although there is no authority as to leases of infants' lands taken

Leases by guardian by election after 14.

Leases by other guardians.

16. GUARDIAN. any part thereof, to give good and sufficient discharges for what he shall so receive; *And* to apply and dispose of the

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by purchase, &c. made by guardians elected before fourteen, yet it seems, according to the prevailing opinion, founded on reasonable grounds, that guardians by the election of the infants themselves after they arrive at the age of fourteen, and guardians appointed by the father, or by the Court of Chancery, as well as guardians in socage, have the power of making valid leases of the infant's lands for so long a time as their guardianship continues. See 4 Bac. Abr. 139; Chambers on Leases, 35; 1 Ld. Raym. 131; 1 Leon. 158; Vaugh. 182; Plowd. 293; Cro. Jac. 55, 99; 2 Lev. 219; 2 P. Wms. 105; 3 Atk. 704; 14 Vin. Abr. 185; 2 Watk. Cop. 105. However, it was held in *Roe* d. *Parry* v. *Hodgson*, 2 Wils. 129, 135, after the infant had come of age, that a testamentary guardian cannot make a lease of the infant's lands, and that a lease previously made by him for twenty-one years was absolutely void, and not merely voidable. But this decision has not been regarded in practice to the extent the words of the report might have warranted. For independently of the above citations, it is opposed by the great authority of Lord Chief Justice *Vaughan*, who clearly held that the office of a guardian appointed by the father, under 12 Car. 2, c. 24, as to the duty and power, is the same as the law before had prescribed and settled of guardian in socage, excepting that it may be held for a longer time, namely, till the heir attains the age of twenty-one; *Bedell* v. *Constable*, Vaugh. 179; and no point is more certain than that a guardian in socage could make valid leases in his own name, to continue during the guardianship. Dr. Wooddeson understood the case of *Roe* v. *Hodgson* to have adjudged, that leases made by a guardian are absolutely void, when the infant attains the age of majority, if the term is then unexpired, without any act done by him to defeat them. 1 Wooddes. Lect. 459. But, he adds, notwithstanding the general expression in the case alluded to, that "a guardian cannot make a lease," it should seem that such demise, to continue during the minority or any shorter term, must be valid, without resorting to the Lord Chancellor's authority, and a reference to a Master of the Court. *Vide* Precedent of a Lease by a Guardian and Ward, *post*, Vol. 4, p. 806.

Guardian by election when an infant is entitled to legacy, &c.

Sometimes guardians by election are appointed when the infant is destitute of a guardian, and is entitled to a legacy, but the trustees of the will have no authority to advance the interest for maintenance, &c., or where the infant is entitled to a distributive share of an intestate's effects, and in both cases the friends of the infant are desirous of avoiding the expense of an application to the Court of Chancery. The chief end the parties have in view by such an appointment is, that without an application to the Court, there may be some persons recognised by law as capable of taking care of the infant, and directing a proper maintenance and education for him, out of the interest of his property, during infancy. An executor or an administrator might, however, without the direction of the guardians, apply a reasonable part of the interest of the infant's legacy or share, during his infancy, for his main-

Executor may allow an infant maintenance, &c. out of the

same as he shall think most for my benefit and advantage: I hereby giving and granting unto the said [*guardian*] my

16. GUARDIAN.

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tenance and education; and such payments would be allowed by the Court. For where an executor, *Lee* v. *Brown*, 4 Ves. 369, and consequently an administrator, does, without application, what the Court would have approved, he will not be called to account, and forced to undo it, merely because it was done without application. But the concurrence of the guardian in the payment and maintenance and education is thought to make it much safer. The act of a guardian without authority of the Court, if beneficial to the infant, Lord *Eldon* said, the Court would *perhaps* ultimately have protected; though, had the actual consequence been detrimental to him, that *might* have created some difficulty. *Milner* v. *Harewood*, 18 Ves. 273. The learned Hargrave appears to have thought, that a guardian in socage is entitled to take into his custody the infant's personal estate, except where by the custom of a particular place it happens to be liable to a different custody: his idea being, that the custody of the infant's person draws after it the custody of every species of property, for which the law has not otherwise provided. Hargr. n. Co. Litt. 88. b. (16). But see Wentworth's Office of Executor, 220, from which it seems, that, in his time, payment of a legacy to the guardian of the *lands* was not a proper payment. *Vide ante*, p. 562. And although Mr. Hargrave's opinion is not sanctioned by the modern Practice of the Court of Chancery, and is opposed by an expression of Lord Chief Justice *Vaughan*, in his Reports, 186, *ante*, p. 561, yet as a guardian by election has the same power and authority as a guardian in socage, there have been instances in which, under the authority of Mr. Hargrave's opinion, executors and administrators have paid infants' legacies and distributed shares to their guardians by election. Sometimes this has been done on an indemnity by the guardians from all actions and claims in consequence of making the payment; and in other instances the money has been invested in the three per cent. Consols, in the names of the executor or administrator, and of the guardians, in trust for the infants. However, this is not a prudent course for the executor or administrator to pursue; for the Court of Chancery has compelled an executor to repay a legacy, which he had previously paid to the father, the natural guardian of an infant entitled to it, in order, as the Lord Chancellor said, not to encourage payments to parents and guardians in wrong of infant children. *Dagley* v. *Tolferry*, 1 P. Wms. 285: *Doyley* v. *Tollferry*, 1 Eq. Ca. Abr. 300, pl. 2: *Dawley* v. *Ballfrey*, Gilb. Eq. Ca. 103, *S. C.* See *Campart* v. *Campart*, 3 Bro. C. C. 195. And see *Holloway* v. *Collins*, 1 Chan. Ca. 245, nearly to the same effect. See also *Philips* v. *Paget*, 2 Atk. 80: *Cooper* v. *Thornton*, 3 Bro. C. C. 96: *Whopham* v. *Wingfield*, 4 Ves. 630: *Colham* v. *West*, 1 Beav. 381. And when the infant's money is invested in the names of the executor or administrator, and of the guardians, there is a possibility of danger in doing it; for in case the executor should die, and the stock be sold out by the survivor, and misapplied, the infant might then call on the representatives of the administrator for repayment of the money. The direct and safe course for the executor or ad-

interest of his legacy.

Rights of guardian in socage to the custody of the infant's personal estate;

Payments of legacies to parents or guardians, not good.

The safe course

16. GUARDIAN. full power in the premises: AND whatsoever he shall lawfully do, or cause to be done by virtue hereof, I do hereby

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for an executor or administrator to pursue is, to pay the infant's money into the Bank.

ministrator* to pursue in such a case is, to pay the infant's legacy or share, after deducting the duty, into the Bank of England with the privity of the accountant-general of the Court of Chancery, to the account of the infant; or, if more than one, to the account of the respective infants; which, after payment of the duty, will be a sufficient discharge for the money so paid; and such money, when paid in, will be laid out by the accountant-general, without any formal request for that purpose, in the purchase of three per cent. Consols, which, with the dividends thereon, will be transferred and paid to the person or persons entitled thereto, or otherwise applied for his or their benefit, on application to the Court of Chancery, by petition or motion in a summary way, by virtue of the statute 36 Geo. 3, c. 52, s. 32.] By the

Stat. 11 Geo. 4 & 1 Will. 4, c. 65, s. 32.

stat. 11 Geo. 4 & 1 Will. 4, c. 65, s. 32, the Court of Chancery is authorized on the petition of any infant in whose name stock is standing, or if no guardian, by order, in any cause, to direct all or a part of the dividends to be paid to the guardian, or any other person, for the infant's maintenance. And by s. 37, similar powers are given to the Court of Exchequer. See *Re Naish*, 18 Law J., Ch., 252.]

Payment to the father directed, where.

[J. Where a legacy is small, and the infant has no other provision, the Court will direct the interest to be paid to their father for maintenance, without a reference; *Ex parte Dudley*, 1 Jac. & W. 254, n.; and the same has sometimes been done as to the principal. *Ex parte Green*, 1 Jac. & W. 253. [See *Ex parte Swift*, 1 Russ. & M. 575: *Re Allsop*, 1 C. P. Coop. 44: *Clay* v. *Pennington*, 3 Sim. 359: *Allen* v. *Coster*, 1 Beav. 202.] It is frequently convenient in giving small legacies to infants to authorize the payment of them to parents or guardians for their use, in order to avoid the necessity of making any application to the Court, or using other means for the indemnity of the executors. As to legacies to infants, see Rop. Leg. by White, Vol. 1.J.]

Guardian's consent to the infant's marriage.

A guardian by election, being a "guardian of the person lawfully appointed," it seems that the consent of such a guardian would be a sufficient consent to the marriage of the infant, where there is no father, or any other guardian. See 26 Geo. 2, c. 32; 3 Geo. 4, c. 75, s. 9. However, this mode has not been resorted to when an opportunity occurred; for, under the old marriage act, an application was made to the Court of Chancery by petition, on behalf of a female infant, in the twentieth year of her age, whose father and mother were both dead, and who had no guardian, nor any property, real or personal, praying that her brother might be appointed her guardian, for the purpose of giving a legal consent to her marriage; on which petition Sir *Thomas Plumer*, V. C., made an order accordingly. *In re Woolscombe*, 1 Madd. Rep. 215, a similar order was made by his Honor, in the preceding term, after looking into the Marriage Act, 26 Geo. 2, c. 32, s. 11, which re-

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* Probably it would be beneficial if the legislature should extend this provision to trustees for infants.

promise to ratify and confirm. In witness whereof I have hereunto set my hand and seal, the —— day of —— 18— (*c*). 16. GUARDIAN.

SIGNED, SEALED, AND DELIVERED, in the presence of }

(*a*) As to the stamp, *vide ante*, p. 503. Stamp.

fers to the Chancellor for the appointment of a guardian to consent to marriage where the infant is without a guardian, and the mother is not living. See 1 Christ. Bla. Com. 438 (8).* In *Horner* v. *Liddiard*, Sir *Wm. Scott* construes the words, *a guardian lawfully appointed*, to mean a guardian appointed by the father only. He cites no authority for this construction. See Dr. Croke's statement of the case, p. 180. [J. The Marriage Act, 4 Geo. 4, c. 76, authorizes the father, if living, and if dead, the guardian appointed by the Court; and if there be no guardian, the mother, being unmarried, to give consent; and in case of incapacity, unreasonable refusal, &c., empowers the Lord Chancellor, Master of the Rolls, or Vice-Chancellor, upon petition, to decide upon the eligibility of the marriage.J.] [See 6 & 7 Will. 4, c. 85. Marriage by license, without consent, is valid, notwithstanding infancy. *Rex* v. *Birmingham*, 2 Man. & Ry. 230; 8 B. & Cr. 29.] Marriage Act, 4 Geo. 4, c. 76.

Where an infant is destitute of a guardian, the Lord-Chancellor has the power of appointing a guardian of his person and estate. Hargr. n. Co. Litt. 88. b. (16); 2 Fonbl. Eq. 226: *De Manneville* v. *De Manneville*, 10 Ves. 52: *Wellesley* v. *D. of Beaufort*, 2 Bligh, N. S. 124; 1 Dow. 154. [And an appointment of a guardian by the infant will not supersede the duty and authority of the Court, whether the infant has socage lands or not. *Curtis* v. *Rippon*, 4 Mad. 462: *Locker's case*, cit. *Ex parte Watkins*, 2 Ves. sen. 470. An appointment by the infant, therefore, cannot be much relied on.] If a guardian appointed by the father die, or refuse to take upon himself the guardianship, or becomes a lunatic, or is otherwise incapacitated to execute the trust reposed in him, the Lord Chancellor may appoint a proper guardian. So, if either a common-law guardian, or a guardian by election, or a testamentary guardian, abuse the trust, by doing anything prejudicial either to the person of the infant or his estate, the Court of Chancery may either totally remove him and appoint another guardian, or else impose such terms on him, by obliging him to give security, &c. as will effectually hinder him from doing anything prejudicial to the infant. 3 B. Abr. 407, 410: *Goodall* v. *Harris*, 2 P. Wms. 560: *Duke of Beaufort* v. *Berty*, 1 P. Wms. 704; 1 Wooddes. 461. [Where a feme guardian appointed by the Court marries, a reference is made to the Master to appoint a new guardian, with liberty for the lady to propose herself. *In* Chancellor may appoint a guardian, and remove all kinds of guardians, for improper conduct.

* Where Mr. Christian thinks a guardian in socage may consent to an infant's marriage.

16. GUARDIAN.

re Gomell, 1 Beav. 347: *Anon.*, 8 Sim. 346.] [J. The Court appoints guardians upon petition, and where the property is small without a reference to the Master. An income of £150 a year, however, has been considered to be too large for the reference to be dispensed with. *Ex parte Janion*, 1 Jac. & W. 395. But, in a more recent case, the Court dispensed with the reference where the infant's annual income did not exceed £80. *Ex parte Jackson*, 6 Sim. 120.J.] [See *In re Allsop*, 1 C. P. Coop. 44.]

The Ecclesiastical Court can only appoint a guardian *ad litem*: which is incident to all Courts.

The right of the Ecclesiastical Court to appoint guardians of the personal estate of infants, has in modern times been treated as a presumption, and has been confined merely to the appointment of guardians *ad litem*, on the ground that it would break in upon the jurisdiction of the Court of Chancery, relating to the guardianship of infants. *Buck* v. *Draper*, 3 Atk. 631: *Rex* v. *Deleval*, 3 Burr. 1436; 3 Bac. Abr. Gwill. Ed. 411. But the power of appointing a guardian *ad litem* is incident to all courts. Hargr. n. Co. Litt. 88. b. (16), *fourth*. [*Evans* v. *Massey*, 1 You. & J. 196: *Ex parte Whitehead*, 2 You. & J. 243: *Whitelock* v. *Finch*, 3 You. & C. 724: *Steed* v. *Calley*, 7 Sim. 148.]

Guardian of a natural child.

Although a father cannot appoint testamentary or any other guardians to his *natural child*, yet where he names persons in his will as guardians, the Court of Chancery will, on petition, appoint those persons guardians; and, as it has been held, without a reference to the Master. *Ward* v. *St. Paul*, 2 Bro. C. C. 583: *Peckham* v. *Peckham*, Ibid.; 2 Cox, 46. But in *Elwes* v. *Const*, 10 Feb. 1818; 1 Madd. Chanc. 2nd Ed., Sir *J. Leach*, V. C., held a reference was necessary, to see if they were fit and proper persons. [J. Probably in these cases, as in those before noticed, the amount of the property would influence the Court in regard to the dispensation with a reference.J.] [And generally an ineffectual appointment of a guardian by a parent will be regarded by the Court. *Hall* v. *Storer*, 1 You. & C. 556. As to the necessity for a reference, see also *Whitelock* v. *Finch*, 3 You. & C. 724.]

Where a natural child is destitute of a guardian, in order to save the expense of applying to the Court, he sometimes appoints one by election, both before and after fourteen, to enable the guardian to make leases of the infant's lands, and to take care of his property and person. For a bastard being considered, as it were, the first of his family, he cannot by law be heir either to his father or to his mother; consequently he cannot take by descent; in which case only guardianship in socage arises; *ante*, p. 559; and as he has no legal relations, excepting those who spring from his body, no person can claim the right of being his guardian. *Vide* Noy's Maxims, 238, 9th Edit. *Hugh Revel's case*, 1 Harg. Jurid. Arg. 397*. *Curtois* v. *Vincent*, Jac. 268.

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* It seems that the guardian, by election, of an illegitimate infant might have given a valid consent to the infant's marriage. But in a note to the 18th Edit. of Blackstone's Commentaries, Vol. 1, p. 438, (2), it is said, "Illegitimate children have been held to be within the operation of the Marriage Act; but where the putative father is dead, in order to legalize their marriage, it is necessary to have the consent of a guardian appointed by the Court of Chancery. *Priestley* v. *Hughes*, E. T. 49 Geo. 3;" S. C. 11 East, 1: *Hankin* v. *Hankin*, 2 Phill. 328. See 4 Geo. 4, c. 76.

17. APPOINTMENT *of a* GUARDIAN *by an Infant.* (*A short Form*). 17. GUARDIAN.

KNOW ALL MEN BY THESE PRESENTS, *That* I [*infant*], of &c., spinster, aged —— years, or thereabouts, daughter of ——, late of &c., deceased (*a*), by —— his wife, also deceased, *have* chosen, nominated, and appointed; *And* by these presents, *do* choose, nominate, and appoint [*guardian*], of &c., to be my guardian, to do, execute, and perform during my minority, all such acts, matters, and things whatsoever for me, and in my behalf, relating to me and my estate, as a guardian may or ought to do (*b*). IN WITNESS &c.

(*a*) An infant having lands or hereditaments which do not attract guardianship in socage (*vide ante*, p. 562), may, it seems, before fourteen, elect a guardian of such lands or hereditaments, notwithstanding his parents are living. So after fourteen, when the guardianship in socage terminates, the infant may exercise his right, although he has parents. For although guardianship by nature continues, notwithstanding the determination of guardianship in socage; yet guardianship by nature only attracts the custody of the infant's person, *ante*, p. 561; but it is not common to elect a guardian when there is a lawful parent living, except it be for the purpose of enabling the guardian to make leases. For whether a parent, Litt. s. 123: *Morgan* v. *Morgan*, 1 Atk. 489, or a stranger enter on the lands of an infant, and take the profits, he will be considered, both at law and in equity, as entering as a guardian, and will be accountable as such, until the heir comes to the age of fourteen years. *Hugh* v. *Hanys*, Cro. Car. 229. But for the profits received after the heir comes to the age of fourteen years, the person receiving must in that case be charged as bailiff. F. N. B. 111. B.; Noy's Max. 38; Co. Litt. 89. a.; Sullivan's Lect. 128, 129, 2nd Ed.; *Dormer* v. *Fortescue*, 3 Atk. 131.

In some cases an infant may elect a guardian, although he has parents.

Whoever takes the profits of an infant's estate, will be accountable as guardian or bailiff.

(*b*) To prevent the necessity of having recourse to the Lord Chancellor, in consequence of the guardian's incapacity or refusal to act, it seems advisable to add,

"BUT such guardianship to cease in case the said [*guardian*] should go to reside abroad, refuse, or become incapable to act in the said guardianship, or become bankrupt or insolvent."

Guardianship to cease on guardian's incapacity, &c.

18. GUARDIAN BY SEVERAL.

18. *An* APPOINTMENT *of* GUARDIANS *by several Infants by one Deed, with a subsequent* RATIFICATION *by such of them as afterwards attained Fourteen Years of Age.*

KNOW ALL MEN BY THESE PRESENTS, *That* WE, the five infant children of ——, late of ——, in the county of ——, deceased, by —— his wife, also deceased, namely [*A. B.*], of ——, in the county of ——, spinster, an infant of the age of twenty years, or thereabouts; [*C. B.*], of ——, aforesaid, carpenter, an infant of the age of seventeen years, or thereabouts; [*E. B*], of ——, aforesaid, spinster, an infant of the age of fourteen years, or thereabouts; [*G. B.*], of ——, aforesaid, spinster, an infant of the age of twelve years, or thereabouts; and [*I. B.*], of ——, aforesaid, spinster, an infant of the age of ten years, or thereabouts, *have*, and each of us *hath* elected, nominated, and appointed; *And* by these presents *do*, and each of us *doth* elect, nominate, and appoint [*guardians*], of &c., and the survivors and survivor of them (*a*), guardians and guardian, curators and curator of our persons respectively, and of our real and personal estates respectively, until we shall respectively attain the age of twenty-one years: AND to do, execute, and perform, during our respective minorities, all such acts, matters, and things whatsoever, for us respectively, and in our behalf respectively, relating to us respectively, and our respective estates, as guardians or curators, or guardian or curator, may or ought to do (*b*). IN WITNESS whereof, we have hereunto set our hands and seals, the —— day of ——, 18—.

(*a*) A guardianship devised to three, without saying and to the survivor of them, yet the survivor shall have it. 2 P. Wms. 103.

Guardianship to cease as to each guardian who becomes incapable to act, &c.

(*b*) "*But* such guardianship to cease as to each, any, or either of the guardians who shall go to reside abroad, refuse, or become incapable to act in the said guardianship, or become bankrupt or insolvent." (*Ante*, p. 571).

SIGNED, SEALED, AND DELIVERED, by the above-named [*A. B.* &c.] in the presence of

18. GUARDIAN BY SEVERAL.

BE IT REMEMBERED, that on this present day, the above-named [*G. B.*], being now of the age of fourteen years, did ratify (*c*) and confirm the election, nomination, and appointment above made. IN WITNESS whereof, she hath hereunto set her hand and seal, the —— day of ——, 18—.

SUBSEQUENT RATIFICATION.

SIGNED, SEALED, AND DELIVERED, by the above-named [*G. B.*] in the presence of (*d*)

(*c*) *Vide ante*, 503.

(*d*) As to the stamp, *vide ante*, p. 504.

Stamp.

19. APPOINTMENT *of a* RECEIVER *by* DEMISE, *upon granting an* ANNUITY (*a*).

19. RECEIVER BY DEMISE ON GRANT OF ANNUITY.

THIS INDENTURE, made &c., BETWEEN [*grantor*], of &c., of the first part; [*trustee*] (*b*), of &c., of the second part; [*grantee*], of &c., of the third part; and [*receiver*], of &c., of the fourth part. WHEREAS [the said [*grantor*] hath contracted and agreed with the said [*grantee*] for the absolute sale to him of a clear annuity or yearly rent-charge of [*annuity*], to be paid to the said [*grantee*], his executors, administrators, and assigns, for and during the term of ninety-nine years, if the said [*grantor*] should so long live; *subject* nevertheless to such power of repurchase as is hereinafter mentioned, for the price of £——. AND WHEREAS] by an indenture, bearing date the day next before the day of the date of these presents, and made between

Parties.

Recital of contract for sale of an annuity for 99 years, if the grantor should so long live.

Recital of

(*a*) [As to the office and authority of a receiver, *vide ante*, p. 68, *et seq.*]

(*b*) See the reason why the trustee is made a party, *post*, p. 574.

19. RECEIVER BY DEMISE ON GRANT OF ANNUITY.

the said [*grantor*] of the first part, the said [*grantee*] of the second part, and [*trustee*] of the third part, in consideration of the [said] sum of £——, to the said [*grantor*] paid by the said [*grantee*]; he the said [*grantor*] *did* grant and confirm unto the said [*grantee*], his executors, administrators, and assigns, *One* annuity or clear yearly rent-charge of [*annuity*], to be chargeable upon and issuing out of the manor, rectory, messuages, lands, tenements, and hereditaments intended to be hereby demised, with the appurtenances, during the term of ninety-nine years, if the said [*grantor*] should so long live, and to be paid and payable to the said [*grantee*], his executors, administrators, and assigns, at or in the common dining-hall of Lincoln's Inn, in the said county of Middlesex, by four equal quarterly payments, between the hours of eleven and twelve of the clock in the forenoon of the —— day of ——, &c. every year, without any deduction or abatement whatsoever; the first of the said quarterly payments to be made on the —— day of —— now next ensuing; and in case of the decease of the said [*grantor*] between any of the said quarterly days of payment, then also a proportional part of the said annuity or yearly rent of [*annuity*], for the time which at the decease of the said [*grantor*] shall have elapsed of the quarterly payment thereof, then growing due; such proportional part to be paid within ten days next after the decease of the said [*grantor*]. AND (*c*) by the same indenture, the said

grant of

annuity,

charged on lands,

for 99 years, if the grantor should so long live;

payable quarterly;

with proportional part to grantor's death;

demise to trustee;

Where a receiver is appointed without a demise to him, the trustee of the term should be a party to the deed to authorize a distress.

(*c*) Some gentlemen omit the recital of the demise to the trustee, and make the grantor alone demise the estate to the receiver, by the direction of the grantee. But as reference is made by the deed appointing the receiver, to the deed granting the annuity, if the annuity-deed were produced, it would immediately appear that the grantor had previously conveyed to the trustee the immediate legal estate in reversion, and consequently that the trustee was the only person entitled to distrain, or to authorize a distress, on the tenant in possession of the lands. *Jenkins* v. *Milford*, 1 Jac. & W. 629, *ante*, p. 76: *Gregory* v. *Henderson*, 4 Taunt. 772. Therefore, unless the receiver distrained as the bailiff of the trustee, the distress could not be supported, at least as to tenants whose leases were granted prior to the annuity, or afterwards, not by indenture. *Vide ante*, p. 364.

Prudent to make the appointment by a demise of the trustee and grantor.

But, as observed *ante*, p. 76, an appointment of a receiver by demise, as in the above form, is preferable to a simple appointment in the nature of a power of attorney, *ut ante*, p. 364; and as the trustee has the immediate legal estate in reversion, expectant on the estates of the tenants in possession, it seems generally prudent to make the trustee a

[*grantor*], for the consideration aforesaid, and also in consideration of five shillings to him paid by the said [*trustee*], *did* grant, bargain, sell, and demise, unto the said [*trustee*], his executors, administrators, and assigns, the said manor, rectory, messuages, lands, tenements, and hereditaments, with the appurtenances: *To hold* the same unto the said [*trustee*], his executors, administrators, and assigns, from the day next before the day of the date thereof, for the term of ninety-nine years, if the said [*grantor*] should so long live; *Upon* certain trusts therein declared for better securing unto the said [*grantee*], his executors, administrators, and assigns, the payment of the said annuity, with such costs, charges, damages, and expenses as are therein mentioned: AND in the said indenture is contained a proviso, enabling the said [*grantor*] or his assigns, at any time during the said term, to repurchase the said annuity, upon giving one month's notice in writing to the said [*grantee*], his executors, administrators, or assigns; and upon payment of all arrears of the said annuity, together with a proportional part thereof from the last quarter day of payment, up to the day of repurchasing the same; together with all costs, charges, and expenses to be incurred by reason of the non-payment thereof; and upon payment unto the said [*grantee*], his executors, administrators, or assigns, of the sum of [*original consideration-money, and one quarter's annuity in advance from the day of repurchase*]. AND WHEREAS it was agreed between the said [*grantor*] and [*grantee*], that a receiver should be from time to time appointed, for collecting and receiving the rents and profits of the said manor, rectory, messuages, lands, tenements, and hereditaments, upon which the said annuity is secured; and that the said [*receiver*] should be the first receiver appointed for that purpose. NOW THIS INDENTURE

19. RECEIVER BY DEMISE ON GRANT OF ANNUITY.

for 99 years, if grantor should so long live;

upon trust for better securing annuity and costs;

power to repurchase, on giving one month's notice;

agreement to appoint receiver.

Testatum.

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party to the demise to the receiver. For the trustee will notwithstanding retain a reversion, as the term in him is for ninety-nine years, if the grantor should so long live; while the term in the receiver is for ninety-nine years, if the grantor and receiver should both of them so long live. And if, notwithstanding the declaration that the term in the receiver shall not prevent the trustee from executing the trusts of his terms, it should be thought that if the deed of receivership were produced, the term in the receiver would prevent the trustee from recovering in ejectment, a power is inserted, enabling the grantee at any time to destroy the term vested in the receiver. See further *ante*, p. 76.

19. RECEIVER BY DEMISE ON GRANT OF ANNUITY.

WITNESSETH, that in pursuance of the said agreement, and in consideration of ten shillings to the said [*grantor*] and [*trustee*], already paid by the said [*receiver*] (*d*); *They* (*e*) the said [*grantor*] and [*trustee*], at the request and upon the nomination of the said [*grantee*], testified by his being a party to, and sealing and delivering these presents, by these presents *do* and each of them *doth* grant, bargain, sell, and demise unto the said [*receiver*], his executors, administrators, and assigns (*g*), ALL THAT the manor or lordship, or reputed manor or lordship, of &c., AND ALL THAT the rectory of the parish of &c., with the glebe lands, tithes, and other appurtenances thereto belonging: AND ALL and every other the messuages, lands, tenements, and hereditaments of or to which the said [*grantor*], or any person or persons in trust for him, now is or are seised or entitled, situate, lying, and being in the several parishes or places of &c., being of a freehold, and not of a copyhold or leasehold tenure, now in the several occupations of the several persons, and at the several yearly rents mentioned and spe-

Appointment of receiver by demise.

Parcels.

Manor, rectory, glebe lands, tithes, &c.

And all other freehold messuages, &c. of grantor situate in certain parishes, and described in schedule.

(*d*) If the demise upon trusts for securing the annuity were made to grantee himself, say,

ORIGINAL DEMISE MADE TO GRANTEE.

"*He* the said [*grantor*], (upon the nomination of the said [*grantee*]), and also the said [*grantee*], *do*, and each of them *doth* grant," &c.

(*e*) If the trustee should object to demise by the word *grant*, but to which there appears not to be the least objection, *vide* Vol. 4, p. 115, then say,

DEMISE WHERE TRUSTEE OBJECTS TO THE WORD "GRANT."

"*He* the said [*grantor*], (at the request and upon the nomination of the said [*grantee*], testified by his executing these presents), by these presents *doth* grant, bargain, sell, and demise; *And* the said [*trustee*], (at the like request and nomination), by these presents *doth* bargain, sell, demise, and confirm, unto the said [*receiver*], his" &c. *ut supra*.

(*g*) When the appointment of a receiver is in a distinct instrument, the parcels must be enumerated as in the annuity or mortgage-deed, or described by reference to a schedule, or rent-roll, to be introduced by way of schedule. If the parcels are very long, and it be desirable that a shorter description should be adopted, and if the circumstances of the case will warrant it, the parcels may be described as "All the manors, &c. now or late of the said [*grantor* or *mortgagor*], situate in the several parishes of ——." But in case the grantor has other lands in these parishes, it will be necessary to have an enumeration by particular description, or by reference to the names of the tenants. Pres. MSS.

Unless the parcels are extremely long, they should be inserted at length.

cified in the schedule hereunder written; together with their and every of their rights, members, and appurtenances whatsoever. And the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits of the manor and other hereditaments hereinbefore expressed to be hereby demised, and every part thereof. To HAVE AND TO HOLD the hereditaments and premises hereinbefore expressed to be hereby demised, with the appurtenances, unto the said [*receiver*], his executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during, and unto the full end and term of ninety-nine years (*h*), if the said [*grantor*] and [*receiver*] should both so long live; without impeachment of waste (so far as the said [*grantor*] can legally grant that exemption): UPON THE TRUSTS *nevertheless*, and for the intents and purposes hereinafter expressed and declared; that is to say, UPON TRUST, that he the said [*receiver*] shall permit and suffer the said [*grantor*], and his assigns, to hold and enjoy the said manor and other hereditaments; and to receive and take the rents, issues, and profits thereof, to and for his and their own use and benefit, until some quarterly payment of the said annuity or yearly rent-charge of [*annuity*], or some part thereof, shall be in arrear and unpaid unto the said [*grantee*], his executors, administrators,

19. RECEIVER BY DEMISE ON GRANT OF ANNUITY.

Reversion, &c.

Habendum to receiver.

for ninety-nine years, if grantor and receiver should both so long live;

upon trusts; *viz.*

to permit grantor to enjoy premises until annuity be in arrear forty days.

(*h*) If the annuity be granted for the life, or determinable with the life of the grantee, or a nominee, the premises should be demised for

ANNUITY FOR THE LIFE OF GRANTEE OR NOMINEE;

"ninety-nine years, if the said [*grantee or nominee*] and [*receiver*] should both of them so long live; without" &c.

But if it be for, or determinable with, the lives of two or more nominees, the demise should be for

TWO OR MORE NOMINEES.

"ninety-nine years, if the said [*receiver*], and also either of them the said nominees should so long live; without" &c. *ut supra.*

If a receiver be appointed of a leasehold estate originally granted for ninety-nine years, if a nominee or nominees should so long live, make the demise to the receiver for

RECEIVER OF LEASEHOLDS.

"ninety-eight years, if the hereinbefore in part recited indenture of lease should so long continue, and if the said [*grantor*] and [*receiver*] should both so long live; without" &c. *ut supra;*

in order to prevent the receiver's liability to the rents and covenants. *Vide ante*, p. 374.

19. RECEIVER BY DEMISE ON GRANT OF ANNUITY.

or assigns, by the space of forty days next after any of the days or times in and by the said indenture appointed for payment thereof. AND UPON FURTHER TRUST, that he the said [*receiver*] shall immediately after any quarterly payment of the said annuity, or some part thereof, shall be in arrear and unpaid by the space of forty days next over or after any of the said days or times appointed for payment thereof as aforesaid, at the request of the said [*grantee*], his executors, administrators, or assigns, enter into and upon the manor, rectory, messuages, lands, tenements, and hereditaments hereinbefore demised, and receive and take the rents, issues, and profits thereof, and ask, demand, collect, and receive of and from all and every, or any, the owners or occupiers of land within the said parish of ——, all tithes, rents, commutations, or compositions for or in lieu of tithes, which shall, from time to time, accrue or become payable to the said [*grantor*], or his assigns, during the continuance of the said annuity or yearly rent-charge; and shall sell and dispose of the said tithes, which shall be received in kind, in such manner as to the said [*receiver*] shall seem meet; AND shall pay, apply, and dispose of the money to be received by all or any of the ways or means aforesaid, for the purposes and in manner following (that is to say); in the first place, the said [*receiver*] shall and may, by and out of the said rents, issues, and profits, retain and reimburse himself, all costs, charges, and expenses which he shall have paid, sustained, or incurred in or about the execution of all or any of the trusts or powers hereby reposed in him; together with a reasonable allowance (*i*) or compensation for his trouble, in or about the execution of the same trusts or powers; *And* after payment and retention thereof, the said [*receiver*] shall, in the next place, pay and satisfy the said [*grantee*], his executors, administrators, and assigns, the said annuity of [*annuity*], as and when the

And after annuity is in arrear forty days, at grantee's request to enter and take the rents;

and collect tithes in kind, and receive compositions for tithes;

and sell tithes received in kind,

and apply the money as follows:

in the first place, receiver to retain expenses,

with a reasonable allowance for his trouble;

and in the next place, to pay annuity,

It is prudent specifically to fix the receiver's allowance, and to authorize him to pay for repairs, &c.

(*i*) A reasonable allowance seems too indefinite; probably disputes and trouble will be prevented by allowing the receiver to retain the usual sum of five pounds, or two pounds ten shillings per centum, according to the nature of the property (*vide ante*, p. 71), upon the gross rents which he shall actually receive, as a compensation for his time and trouble, *ut ante*, p. 365. And it seems prudent to authorize the receiver to pay the taxes, &c. and the expenses of repairs, as there mentioned. For without an express authority he cannot make those payments. *Ante*, p. 77.

19. RECEIVER BY DEMISE ON GRANT OF ANNUITY.

same shall from time to time become due and payable, according to the true intent and meaning of the said indenture; together with all such costs, charges, and expenses as shall have been paid, sustained, or incurred by reason or in consequence of the non-payment thereof; *And* after making the several payments and deductions aforesaid, the said [*receiver*] shall, from time to time, pay the clear residue or surplus of the money which shall have come to his hands for or in respect of the said rents, issues, tithes, and profits, unto the said [*grantor*], or his assigns, or to such other person or persons as he or they shall direct or appoint. AND *it is hereby declared*, that it shall and may be lawful to and for the said [*receiver*], from time to time, and at any time or times after one quarterly payment of the said annuity, or any part thereof, shall be in arrear by the space of forty days as aforesaid, and during the continuance of the same annuity, to take and use every lawful remedy by action, suit, distress (*k*), or otherwise, for collecting and recovering the rents, issues, and profits of the hereditaments expressed to be hereby demised, of and from the respective tenants or occupiers thereof for the time being; or for the recovering or collecting of the said tithes, or compositions for tithes, or any of them, or any part thereof; and to employ such agents or workmen to assist therein, and to do or transact all acts, matters, and things in or about the premises, as fully and effectually, to all intents and purposes, as the said [*grantor*], or his assigns, or the said [*trustee*], his executors, administrators, or assigns, any or either of them, might or could have done if these presents, or the said indenture, had not been made or executed: AND ALSO, that it shall be lawful for the said [*receiver*], from time to time, or at any time or times, after any quarterly payment of the said annuity shall be so in arrear as aforesaid, and during the continuance of

together with all costs, &c.

and pay the residue to grantor.

Power to receiver to distrain and collect tithes.

Power to receiver to eject tenants and relet the premises.

(*k*) Independently of this power, a mortgagee, and consequently a person having the legal estate upon trusts for securing an annuity, after giving notice of the mortgage or annuity deed to the tenant in possession under a lease prior to the mortgage or annuity, is entitled to the rent in arrear at the time of the notice, as well as to what accrues afterwards, and he may distrain for it after such notice. [*Vide post*, Vol. 5, p. 360.] As to an action for mesne profits on an ejectment, *vide ante*, p. 224; as to a distress on tenants for a rent-charge, *ante*, 36; and as to giving up possession after the arrears of the annuity are satisfied, *ante*, p. 49.

Notice of the deed should be given to the tenants in possession before a distress is made by a mortgagee, trustee, or receiver.

19. RECEIVER BY DEMISE ON GRANT OF ANNUITY.

the same annuity, to remove (*l*) and put any tenant or tenants, occupier or occupiers of the said hereditaments and premises, or any part thereof, out of and from the possession of the same; and to let or demise the same hereditaments, or any part or parts thereof, to any person or persons, for any term or terms not exceeding seven years, in possession, upon such terms and conditions as the said [*receiver*] shall think fit (*m*). PROVIDED ALWAYS, *and it is hereby declared and agreed*, that if the said [*grantor*], or his assigns, or any of them, should at any time during the continuance of this demise, repurchase the said annuity, pursuant to the power or proviso for that purpose contained in the indenture hereinbefore recited, *Then* and in such case, and upon payment by the said [*grantor*], or his assigns, unto the said [*receiver*], of a reasonable compensation or allowance for his trouble in the execution of the trusts and powers herein contained, the term of ninety-nine years hereby created shall thenceforth determine and become absolutely void. AND THE SAID [*grantor*] doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that if at any time during the continuance of the said annuity, the said [*receiver*], or any future receiver to be appointed as hereinafter mentioned, should happen to die, or should refuse or neglect, or become in any manner unable to collect or receive the rents and profits of the said premises or to apply the same in manner aforesaid: or in case the said [*grantee*], his executors, administrators, or assigns, should be desirous of removing the said [*receiver*], or any future receiver, from being such receiver as aforesaid, *Then*, and in any of the said cases, he the said [*grantor*] (*n*), or his assigns, will or shall join with the said [*trustee*], his executors, administrators, or assigns, in authorizing and empowering such other fit person in the place or stead of the said [*receiver*], or the receiver for the time being, as the said

Cesser of term upon repurchase of annuity.

Covenant by grantor to join with the trustee in appointing such new receiver as grantee shall nominate;

(*l*) *Vide ante*, p. 78.

(*m*) For the satisfaction of persons paying money to the receiver, it seems prudent to declare that his receipts shall be sufficient discharges, &c., *ut ante*, p. 365.

(*n*) This and the succeeding clause are usually inserted to prevent the person appointing from being answerable for the receiver's deficiencies. *Vide ante*, p. 74.

[*grantee*], his executors, administrators, or assigns, shall from time to time nominate or appoint, to collect, receive, and pay the said rents, issues, tithes, and profits, in manner, and upon the trusts aforesaid: *And then*, in any of the said cases, the said [*grantor*], or his assigns, will or shall from time to time grant, or join with the said [*trustee*], his executors, administrators, or assigns, in granting the like term of ninety-nine years, of and in the said premises, to such person or persons as the said [*grantee*], his executors, administrators, or assigns, shall nominate for that purpose; which term or terms of ninety-nine years, so to be granted, shall respectively be determinable upon the death of the same person or persons, so to be from time to time nominated as last aforesaid, and of the said [*grantor*], or either of them; and shall be upon such and the same trusts, and under and subject to such and the same provisions, declarations, and agreements, as are herein contained concerning the term of ninety-nine years hereby granted; and also with, under, and subject to such other provisons, declarations, covenants, and agreements, as the nature of the case may then require; and as by the said [*grantee*], his executors, administrators, or assigns, or his or their counsel in the law, shall be thought requisite and proper to be inserted in such grant or demise: AND that if the said [*grantor*], or his assigns, or any of them, should refuse or neglect to join with the said [*trustee*], his executors, administrators, or assigns, in authorizing or appointing such future receiver or receivers as aforesaid; or to demise the said hereditaments in manner hereinbefore expressed for the space of three calendar months next after the decease, incapacity, misbehaviour, or removal of the said [*receiver*], or any other receiver, to be constituted as aforesaid, *Then*, and in such case, and so often as the same shall happen, it shall be lawful for the said [*trustee*] (*o*), his executors, administrators, or assigns, at the request and by the direction of the said [*grantee*], his executors, administrators, or assigns, without the concurrence of the said [*grantor*], or his assigns, from time to time, to constitute some person to collect, receive, and pay the said rents, issues, tithes, and profits; and also to make such grant and

19. RECEIVER BY DEMISE ON GRANT OF ANNUITY.

and that in case of grantor's neglect, trustee may alone, at the request of grantee, appoint new receiver.

(*o*) If the original demise were made to the grantee himself, say, "for the said [*grantee*], his executors, administrators, or assigns, if he or they should think proper, without" &c.

ORIGINAL DEMISE MADE TO GRANTEE.

19. RECEIVER BY DEMISE ON GRANT OF ANNUITY.

demise for a term of ninety-nine years, determinable upon the joint lives of the said [*grantor*], and of such person or persons, so to be appointed as last aforesaid, upon the trusts and in manner aforesaid; and every such nomination and appointment, grant, and demise, as last aforesaid, shall be as valid and effectual, to all intents and purposes, as if the said [*grantor*], or his assigns, had joined therein and executed the same. AND THE SAID [*receiver*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*grantor*], and his assigns, and also severally, with and to the said [*grantee*], his executors, administrators, and assigns, that he the said [*receiver*] will, from time to time, and at all times hereafter, during such time as he shall be continued receiver and collector of the said rents, issues, tithes, and profits in manner aforesaid, use his utmost endeavours to collect and receive the same rents, issues, tithes, and profits, pursuant to the trusts and directions aforesaid; and duly pay and apply the same in manner hereinbefore directed. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*receiver*], his executors, administrators, and assigns, that he the said [*grantor*], or his assigns, or some or one of them, will or shall allow and pay, or cause to be allowed and paid unto the said [*receiver*], when, and so long as he shall receive the said rents, issues, tithes, and profits, in pursuance of the trusts and powers hereinbefore contained, a reasonable allowance (*p*) for his expenses and trouble in collecting and receiving the same, and for acting in the same trusts. AND ALSO (*q*), that he the said [*receiver*] shall not be answerable for any other monies than such as he shall actually receive by virtue of or under these presents; or for any loss which may happen by the insolvency of any tenant or occupier of the hereby demised premises, or any part thereof; or for the insufficiency or deficiency of any beasts or cattle, goods or chattels, which shall be had or taken by way of distress for rent, or arrears of rent, due, or to grow due, for or in respect of the said premises, or any of them; *So* that the same do not happen through his wilful

Covenant by receiver to collect and duly apply rents and tithes.

Covenant by grantor to pay receiver a reasonable allowance;

and that receiver shall not be answerable for involuntary losses.

(*p*) [*Vide ante*, p. 578, n.]

(*q*) It is usual and proper to insert the above provision, although a receiver, whether appointed by the Court or by deed, is not answerable for involuntary losses. *Ante*, p. 78.

19. RECEIVER BY DEMISE ON GRANT OF ANNUITY.

neglect or default: nor for any banker, or other person with whom any of the monies which shall come to the hands of the said [*receiver*], by virtue of these presents, shall be deposited for safe custody. PROVIDED ALWAYS, and these presents are upon this express condition, that in case the said [*receiver*], by any disability, should be rendered incapable to collect the said rents and profits, or should neglect or refuse to act or proceed therein, or to apply the same according to the trusts aforesaid; or should otherwise misbehave himself, in relation to the trusts hereby in him reposed; or in case the said [*grantee*], his executors, administrators, or assigns, should be desirous of determining the term of ninety-nine years, hereby granted; and if in any of the said cases, the said [*grantee*], his executors, administrators, or assigns, should tender or cause to be tendered, unto the said [*receiver*] the sum of one shilling, with the intent to frustrate, determine, and make void the term and estate of ninety-nine years, hereby granted as aforesaid; and should within the space of six calendar months, thence next ensuing, by any deed or writing under the hand and seal, or hands and seals of the said [*grantee*], his executors, administrators, or assigns, signify unto the said [*receiver*], such his or their intention, *Then*, and in such case, the term and estate hereby granted as aforesaid to the said [*receiver*] of and in the said hereditaments and premises, and every part thereof; and in all the powers and authorities hereby given to, or vested in the said [*receiver*], shall thenceforth cease, determine, and be void to all intents and purposes whatsoever. AND *it is hereby agreed and declared* by and between the said [*grantor*] and [*grantee*], that he the said [*grantee*], his executors, administrators, or assigns, shall not bear or sustain, or be charged or chargeable with, or accountable for any loss which may happen of the rents, issues, and profits of the said premises, or any of them, by reason or means of any neglect or default, or breach of trust of the said [*receiver*], or any future collector or receiver of the same (*r*). PROVIDED ALWAYS, that these presents, or any thing herein contained, shall not prevent or be construed to restrain the said [*grantee*], his executors, administrators, or assigns, from suing for, recovering, or compelling payment of the

Power to grantee to remove receiver, and determine his estate.

Agreement that grantee shall not be answerable for receiver.

Appointment of receiver not to prevent grantee from exercising any of his remedies;

(*r*) *Vide post*, p. 594, (*h*).

19. RECEIVER BY DEMISE ON GRANT OF ANNUITY.

said annuity or yearly rent-charge of [*annuity*], or any part thereof; or from using or exercising all or any of the powers or remedies by the above-recited indenture given, limited, or reserved to him or them for enforcing such payment, or for obtaining possession of the said hereditaments and premises so charged therewith as aforesaid, or any part thereof; *And also* (*s*) shall not prevent, or be construed to restrain the said [*trustee*], his executors, administrators, or assigns, from executing or exercising all or any of the trusts, powers, or authorities by the said indenture reposed, given, limited, or reserved to him or them. IN WITNESS &c.

nor trustee from executing the trusts.

THE SCHEDULE TO WHICH THE ABOVE-WRITTEN INDENTURE REFERS.

ORIGINAL DEMISE MADE TO GRANTEE.

(*s*) If the original demise, upon trusts for securing the annuity, were made to the grantee himself, this part must of course be omitted.

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20. RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

20. APPOINTMENT *of a* RECEIVER *by two Mortgagors and the Mortgagee* (*a*), *either of* FREEHOLD *Premises alone, or both of* FREEHOLD AND COPYHOLD; *the Freehold by* DEMISE, *the Copyhold by* POWER OF ATTORNEY; *with Variations adapted to a Mortgage made* UNDER A POWER *in a Settlement.*

Parties.

THIS INDENTURE, made &c., BETWEEN [*mortgagor*], of &c., [*other mortgagor*], of &c., of the first part; [*mortgagee*], of &c., of the second part; and [*receiver*], of &c., of the third part.

Recital of mortgage by lease, and appointment, and release from two to one.

WHEREAS by indenture of lease, and indenture of appointment and release, the lease bearing date the day before, and the appointment and release even date with these presents, and respectively made between the said [*mortgagors*], of the one part, and the said [*mortgagee*], of the other part; in consideration of the sum of [*mortgage money*], to the said [*mortgagors*], paid by the said [*mortgagee*], *All that, &c.* (*describe the parcels, omitting the*

(*a*) [See clause in a mortgage-deed, appointing a receiver, *post*, Vol. 6, p. 103, 346.]

20. RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

general words, and clause of the reversion) (*b*), with their appurtenances, were appointed and released by the said [*mortgagors*], and now stand limited, *To the use* of the said [*mortgagee*], his heirs and assigns, for ever: *Subject*, nevertheless, to a proviso or agreement, contained in the said indenture of appointment and release, for redemption of the same premises, on payment by the said [*mortgagors*], or either of them, their, or either of their heirs, executors, administrators, or assigns, unto the said [*mortgagee*], his executors, administrators, or assigns, of the sum of [*mortgage money*], with interest for the same in the meantime, after the rate of five pounds per centum per annum, by equal half-yearly payments on the —— day of ——, and the —— day of ——, now next ensuing (*c*). AND WHEREAS it hath been agreed between the said [*mortgagors*] and the said [*mortgagee*], that for securing the regular half-yearly payment of the interest of the said sum of [*mortgage money*], so long as

Recital of agreement for appointing receiver.

(*b*) *Vide ante*, p. 576 (*g*).

(*c*) If there be also copyhold premises, add,

FREEHOLD AND COPYHOLD.

"And by the said indenture of appointment and release, the said [*mortgagors*] *did*, for the consideration aforesaid, for themselves jointly and severally, and for their respective heirs, executors, and administrators, covenant and agree with the said [*mortgagee*], his heirs, executors, administrators, or assigns, that they the said [*mortgagors*], respectively, and their respective heirs and assigns, and all other persons claiming any estate, right, title, trust, or interest in or to the premises, and whose concurrence should be requisite, would at the next court to be holden for the manor of ——, in the county of ——, or as soon thereafter as conveniently might be, at their own costs and charges, surrender into the hands of the lord or lords, lady or ladies, of the said manor, according to the custom of the said manor, *All those* &c., with their rights, members, privileges, and appurtenances; *And* all other the lands, tenements, and hereditaments whatsoever of them the said [*mortgagors*], holden of the said manor by copy of court-roll, *To the use* of the said [*mortgagee*], his heirs and assigns, *Upon condition* that the said surrender should be void, on payment of the said principal money and interest, on the days and in manner hereinbefore mentioned for payment thereof."

Recital of covenant by two, to surrender copyholds in fee to mortgagee.

20. RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

the same principal sum shall remain upon the security of the said manors and other the hereditaments comprised in the said indentures of lease and appointment and release, a receiver should be from time to time appointed for collecting and receiving the rents and profits of the said mortgaged premises: *and* that the said [*receiver*] should be the first receiver appointed for that purpose. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of five shillings to each of the said [*mortgagors*] and [*mortgagee*], paid by the said [*receiver*], at or before the sealing and delivery of these presents, the receipt whereof is hereby respectively acknowledged; *they* the said [*mortgagors*] upon the nomination of the said [*mortgagee*] and also the said [*mortgagee*] (*d*), by these presents do, and every of them doth (*e*) grant, bargain, sell, and demise unto the said [*receiver*], THE SAID (*g*) manor, and other hereditaments, hereinbefore described, and comprised in, and appointed and released by the above-recited indenture of appointment and release, with their and every of their rights, royalties, members, and appurtenances: AND the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits, of the manor and other hereditaments hereinbefore expressed to be hereby demised, and every part thereof: TO HAVE AND TO HOLD the said manor and other hereditaments, with the appurtenances, unto the said [*receiver*] from the day next before the day of the date hereof, for and during, and unto the full end

Testatum.

Demise by two mortgagors and mortgagee, to receiver.

Parcels by reference to recital.

Reversion, &c.

Habendum to receiver for ninety-nine years, if he should so long live,

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(*d*) The mortgagee is made a party to the demise, because he has the legal estate. *Vide ante*, p. 364, (*l*).

Grant by mortgagee.

(*e*) There appears to be no objection to the word *grant* being used by the mortgagee; but if he should prefer its omission, *vide ante*, p. 576.

FREEHOLD AND COPYHOLD.

(*g*) If there be also copyholds, say,

Freehold parcels by reference to recital.

"THE SAID manor or lordship, or reputed manor or lordship, and all and singular the freehold messuage or tenements, lands, hereditaments, and premises, mentioned and described in the said indenture of appointment and release, bearing even date herewith, and thereby appointed and released, unto the use of the said [*mortgagee*], his heirs and assigns, as aforesaid, with their and every of their rights, royalties, members, and appurtenances: AND the reversion" &c. *ut supra.*

and term of ninety-nine years (*h*), if the said [*receiver*] should so long live, without impeachment of waste: UPON TRUST *nevertheless*, that the said [*receiver*] shall permit and suffer (*i*) the said [*mortgagor*], and [*other mortgagor*], respectively, and their respective heirs and assigns, to hold and enjoy the said manor and hereditaments, and to receive and take the rents, issues, and profits thereof, until one half year's interest of the said sum of [*mortgage money*], or some part thereof, shall be in arrear and unpaid unto the said [*mortgagee*], his executors, administrators, or assigns, by the space of twenty-eight days (*k*) next after either of the following days: that is to say; the —— day of ——, and the —— day of —— in any year or years. AND UPON FURTHER TRUST, that he the said [*receiver*] shall, from and immediately after one half year's interest of the said sum of [*mortgage money*], or some part thereof, shall be in arrear and unpaid, by the space of twenty-eight days next over or after either of the days hereinbefore appointed for payment thereof as aforesaid, enter into and upon, and from time to time thenceforth during so many years of the said term, determinable as aforesaid, as the said principal sum, or any part thereof shall remain at interest on the aforesaid security, receive and take the yearly rents, issues, and profits of the manors and other hereditaments expressed to be hereby demised, and dispose of the same in manner hereinafter mentioned (*l*). AND *it is hereby agreed and declared*, that the

20. RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

upon trust to permit mortgagors to receive rents until half a year's interest be in arrear twenty-eight days.

After half a year's interest shall be in arrear twenty-eight days, receiver to enter, and for remainder of term receive rents.

(*h*) If the premises be leasehold, *vide ante*, p. 576.

LEASEHOLD.

(*i*) If the mortgage be made under a power in a settlement, say,

MORTGAGE UNDER A POWER.

"The person or persons for the time being entitled to redeem the premises, to hold" &c.

(*k*) The time most usually fixed is, either forty days or six weeks; but twenty-eight days seems a more reasonable time, and it is occasionally the period limited. *Vide post*, p. 600.

The time before which the receiver is to act.

(*l*) If there be also copyholds, add,

FREEHOLD AND COPYHOLD.

"AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance of the said agreement, *They* the said [*mortgagors*], and [*mortgagee*], by these presents *do*, and each and every of them *doth* authorize, direct, and appoint the said [*receiver*], from time to time, in case one half year's interest of the said principal sum of [*mortgage money*], or of any part thereof, should be in arrear and unpaid as aforesaid,

Power of attorney to receiver to collect rents, &c. of copyholds.

20. RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

Receiver out of rents, to pay interest due, and to become due.

And pay residue to mortgagors;

after retaining a reasonable compensation for acting as receiver, and for his expenses.

Power to receiver to recover rents by action, distress, &c.

said [*receiver*] shall, from time to time, by, and out of the rents, issues, and profits to be received as aforesaid, pay unto the said [*mortgagee*], his executors, administrators, and assigns, the interest which shall be due upon the said sum of [*mortgage money*], at the time of the said [*receiver's*] entering into the receipt of the said rents and profits; and also the interest thenceforth to become due upon or in respect of the said sum of [*mortgage money*], at or upon the days or times hereinbefore appointed for payment thereof, as aforesaid: AND after payment thereof, shall pay unto (*m*) the said [*mortgagors*] respectively, their respective heirs (*n*), executors, administrators, and assigns, or to such person or persons as they shall respectively direct, the clear residue of the said rents and profits, which shall from time to time remain, after such payments as aforesaid, after deducting and retaining out of such residue for the use of him the said [*receiver*], all such sums of money as he the said [*receiver*] shall reasonably (*o*) deserve, as a compensation for his trouble and expenses, in receiving and paying the said rents and profits, in manner aforesaid; and as he shall be put unto, or sustain, in or about the execution of the trusts hereby in him reposed. AND *it is hereby agreed and declared*, that it shall and may be lawful for the said [*receiver*], from time to time, and at all times, after one

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to collect and receive all and every, the rents and profits, as well annual as casual, of, or arising from or out of the copyhold or customary lands, tenements, hereditaments, and premises mentioned and described in the said indenture of appointment and release bearing even date herewith, and thereby covenanted to be surrendered as aforesaid, of and from the respective tenants or occupiers thereof, as the same shall become due and payable; and upon payment or receipt thereof, to make and give acquittances or discharges for the same. AND *it is hereby agreed*" &c.

MORTGAGE UNDER A POWER.

(*m*) If the mortgage be made under a power in settlement, say, "The person or persons for the time being entitled to receive the same, or to such person or persons as he or they shall direct, the clear residue" &c.

(*n*) Rents payable in mortgagor's life belong to his executor, but those afterwards, to his heir. *Ante*, p. 365, (*k*).

(*o*) It seems prudent specifically to fix the receiver's allowance. *Vide ante*, p. 578, (*i*).

20. RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

half year's interest of the said sum of [*mortgage money*], or any part thereof, shall be in arrear as aforesaid; and during such time as the said principal sum or any part thereof, shall thenceforth remain upon the security aforesaid, to take and use every lawful remedy, by action, suit, distress (*p*), or otherwise, for collecting and recovering the rents, issues, and profits (*q*) of the manor and other hereditaments expressed to be hereby demised, of and from the respective tenants or occupiers thereof; and to do and execute all other matters and things needful and requisite for collecting and receiving the same. AND ALSO, that it shall be lawful for the said [*receiver*], from time to time, and at all times, after the said half year's interest shall be in arrear as aforesaid, during the said term of ninety-nine years, determinable as aforesaid, and whilst the said principal sum of [*mortgage money*], or any part thereof, shall remain upon the security aforesaid, to remove and put any tenant or occupier of the said mortgaged premises, or any part thereof, out of and from the same (*r*): and to let or demise the same premises, or any part or parts thereof, unto such person or persons, for any term not exceeding seven (*or* fourteen, *or* twenty-one) years in possession; and upon and under such terms and conditions, and in such manner and form, as the said [*receiver*], with the consent of the said [*mortgagee*], his executors, administrators, or assigns, shall think proper (*s*). (*t*).

Power to receiver to eject tenants, and, with mortgagee's consent, to lease premises.

(*p*) In relation to the copyholds, this power is absolutely requisite; because the receiver has no estate in the copyhold lands. *Ante*, p. 364.

(*q*) If there be also copyhold premises, say,

FREEHOLD AND COPYHOLD.

"as well as the freehold hereditaments and premises hereby demised as of the copyhold hereditaments and premises by the said indenture, bearing even date herewith, covenanted to be surrendered as aforesaid, of and from" &c.

(*r*) *Vide ante*, p. 78.

(*s*) If there be also copyhold premises, add,

FREEHOLD AND COPYHOLD. Leases of copyholds to be made with lord's license.

"*But so, nevertheless,* that every such lease or demise of the said copyhold premises, or any part thereof, be made with the license and consent of the lord for the time being of the said manor of ——, according to the custom of the said manor, or without incurring a forfeiture of the same copyhold premises, or any part thereof. PROVIDED ALWAYS, that" &c.

(*t*) For the satisfaction of persons paying money to the receiver, it

20. RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

Cesser of term on payment of mortgage money and receiver's allowance.

PROVIDED ALWAYS, that if the said (*u*) [*mortgagors*] or either of them, or the heirs, executors, administrators, or assigns of them or either of them, should at any time before the expiration of the said term of ninety-nine years, determinable as aforesaid, pay unto the said [*mortgagee*], his executors, administrators, or assigns, the said principal sum of [*mortgage money*], with all interest then due for the same; and should pay unto the said [*receiver*], a reasonable allowance for his trouble and care in and about the trusts aforesaid; *Then* and immediately after such payment, the term of ninety-nine years hereby created (*x*) shall thenceforth cease, determine, and be void.

Covenant by two mortgagors, in case of receiver's death &c., to join with mortgagee in appointing such new receiver as he shall nominate;

AND THE SAID [*mortgagors*] do hereby, for themselves jointly and severally, and for their respective heirs, executors, and administrators, covenant and agree with the said [*mortgagee*], his heirs, executors, administrators, and assigns, that if the said [*receiver*] should die during such time as the said principal sum of [*mortgage money*], or any part thereof, or any interest thereupon shall remain due and unpaid; or if the said [*receiver*] should be removed from or become in any manner incapable of collecting and receiving the rents and profits of the said premises, or should neglect or refuse to act and proceed therein, or apply the same in manner aforesaid, during such time as the said sum of [*mortgage money*], or any part thereof, shall remain due and owing, or should otherwise misbehave himself in the trusts aforesaid; *Then*, and in any of the said cases, they the said [*mortgagors*] (*y*) respectively, or their respective heirs or assigns, will or shall join with the said [*mortgagee*], his heirs, executors, administrators, or assigns, in removing the said [*receiver*], if living, from his said employment, or in

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seems prudent to declare that his receipts shall be discharges, &c. *ut ante*, p. 365.

MORTGAGE UNDER A POWER.

(*u*) If the mortgage be made under a power in a settlement, add, "the person or persons for the time being entitled to redeem the premises, should" &c.

FREEHOLD AND COPYHOLD.

(*x*) If there be also copyhold premises, add, "and also the power and authority hereby given to the said [*receiver*], shall" &c.

MORTGAGE UNDER A POWER.

(*y*) If the mortgage be made under a power in a settlement, say, "or the person or persons for the time being entitled to redeem the premises, will or shall" &c.

constituting such other fit person in the place or stead of the said [*receiver*] as the said [*mortgagee*], his executors, administrators, or assigns, shall from time to time nominate or appoint, to collect, receive, and pay the said rents and profits, in the manner and upon the trusts aforesaid; *And then* and in any of the said cases the said [*mortgagors*] (*z*) respectively, and their respective heirs and assigns, will and shall grant, or join with the said [*mortgagee*], his heirs or assigns, in granting the like term of ninety-nine years of and in the said (*a*) premises to such person or persons as the said [*mortgagee*], his executors, administrators, or assigns, shall nominate for that purpose; which term of ninety-nine years shall be determinable upon the death of the person or persons so to be nominated as last aforesaid; and shall be upon such trusts, and under such and the same provisoes, declarations, covenants, and agreements, as are herein contained concerning the term of ninety-nine years hereby granted: and also under such other provisoes, declarations, covenants, and agreements, as the nature of the case may then require, and as shall, by the said [*mortgagee*], his executors, administrators, or assigns, or his or their counsel in the law, be thought requisite and proper to be inserted in such grant or demise; *And* so from time to time, when and as often as the same shall happen, until the said principal sum of [*mortgage money*], and all interest thereupon, shall be fully paid and satisfied. And if the said [*mortgagors*] (*b*) respectively, or their respective heirs or assigns, or any of them, should refuse or neglect so to do, for the space of three calendar months next after the decease, incapacity, or misbehaviour of the said [*receiver*], or any other receiver to be constituted as aforesaid, *Then,* and in such case, and so often as the same shall happen, it shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, if he or they should think proper, without the consent or concurrence of the said [*mortgagors*] (*b*), or

20. RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

and to demise premises to new receiver;

and so from time to time.

If mortgagors neglect to appoint new receiver, mortgagee, without their concurrence, to appoint receiver and demise to him.

(*z*) See note (*y*), p. 590.

(*a*) If there be also copyhold premises, say,

FREEHOLD AND COPYHOLD.

"freehold premises" &c.

(*b*) If the mortgage be made under a power in a settlement, say,

MORTGAGE UNDER A POWER.

"or either of them, or the person or persons for the time

20. RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

either of them, or the heirs or assigns of them or either of them, to constitute some person to collect, receive, and pay the said rents and profits; and also to make such grant and demise for a term of ninety-nine years, determinable upon the life or lives of the grantee or grantees, upon the trusts and in manner aforesaid. AND THE SAID [*receiver*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*mortgagors*] respectively, and their respective heirs and assigns, and also with the said [*mortgagee*], his executors, administrators, and assigns, that he the said [*receiver*] will, from time to time, and at all times hereafter during such time as he shall be continued receiver and collector of the said rents and profits in manner aforesaid, use his utmost endeavours to collect and receive the same rents and profits, pursuant to the trusts and directions aforesaid; AND THE SAID [*mortgagors*], for themselves jointly and severally, and for their respective heirs, executors, and administrators, do hereby covenant and agree with the said [*receiver*], his executors, administrators, and assigns, that they the said [*mortgagors*], their heirs and assigns (*c*), or some or one of them, will and shall allow and pay unto the said [*receiver*], when and so long as he shall receive the said rents and profits, a reasonable allowance for his expenses and trouble in collecting and receiving the same, and for acting in the trusts hereinbefore declared; *And* that it shall be lawful for the said [*receiver*] to retain and take such allowance for his own use accordingly; AND ALSO (*d*) that the said [*receiver*] shall not be answerable for

Covenant by receiver with mortgagors and mortgagee to collect and duly apply rents.

Covenant by mortgagors to pay, and permit receiver to retain, a reasonable allowance;

and that receiver shall not be answerable.

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being entitled to redeem the said hereditaments and premises, or any of them," &c.

MORTGAGE UNDER A POWER.

(*c*) If the mortgage be made under a power in a settlement, add, "or other the person or persons for the time being entitled to redeem the said hereditaments and premises, or some" &c.

Receiver's indemnity clause always inserted.

(*d*) Independently of this clause, the receiver is not answerable for involuntary losses. *Ante*, p. 78. But such a clause is always inserted, in order to relieve the receiver's mind from any anxiety on that ground. Sometimes the indemnity is extended by the original deed to future receivers, as in the following form. Although this mode is not common, yet it is found useful in case the mortgagor neglects to join in a future appointment, or his heir is disabled from joining by infancy, &c., for it is easier to procure a receiver where there is a clause of indemnity, than where there is not such a clause.

Advantages of extending it to future receivers.

any other monies than such as he shall actually receive by virtue of or under these presents; or for any loss which may happen by the insolvency of any tenant or occupier of the said premises, or any part thereof; or for the insufficiency or deficiency of any beasts or cattle, goods or chattels, which shall be had or taken by way of distress for rent, or arrears of rent, due or to grow due for or in respect of the said (*e*) premises, or any of them; so that the same do not happen through his wilful neglect or default; nor for any banker, or other person, with whom any of the monies which shall come to the hands of the said [*receiver*] shall be deposited

20. RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

for involuntary losses.

"PROVIDED ALWAYS, *and it is hereby declared and agreed*, that the said [*receiver*], his heirs, executors, administrators, and assigns, and also the person who from time to time shall be appointed the receiver by virtue of the covenant (*or* provision) hereinbefore contained, his heirs, executors, administrators, and assigns, shall severally and respectively be charged and chargeable only for such monies as they respectively shall actually receive by virtue of the trusts, powers, or confidence hereby in them reposed. *And* that any one or more of them shall not be answerable or accountable for the other or others of them, or for the acts, receipts, neglects, or defaults of the other or others of them; *But* each and every of them only and respectively for his and their own acts, receipts, neglects, or defaults respectively: *And* that they, or any of them, shall not be answerable or accountable for any banker, goldsmith, broker, or other person with whom, or in whose hands any of the said trust monies shall or may be deposited or lodged for safe custody or otherwise, in the execution of the trusts hereinbefore contained. *And* that they, any, or either of them, shall not be answerable or accountable for any misfortune, loss, or damage which may happen in the execution of the aforesaid trusts, or in relation thereto, except the same should happen by or through his or their wilful default respectively. *And* then and in that case, each person respectively shall singly and alone be answerable for such loss or damage as shall arise from his or their own default."

Indemnity to present and future receivers.

(*e*) If there be also copyhold premises, say,

FREEHOLD AND COPYHOLD.

"freehold and copyhold premises, or any of them or any part thereof; so that" &c.

20. RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

for safe custody. PROVIDED ALWAYS, *and these presents are* UPON THIS EXPRESS CONDITION, that in case at any time while the said sum of [*mortgage money*], or any part thereof, shall remain at interest upon the said security, the said [*receiver*], by any disability, should be rendered incapable to collect the said rents and profits, or should refuse or neglect to act or proceed therein, or to apply the same according to the trusts aforesaid; or shall otherwise misbehave himself in relation to the trusts hereby in him reposed; or in case the said [*mortgagee*], his executors, administrators, or assigns, should be desirous of determining the said term of ninety-nine years, and if in any of the said cases the said [*mortgagee*], his executors, administrators, or assigns, should tender, or cause to be tendered, unto the said [*receiver*] the sum of one shilling, with the intent to frustrate, determine, and make void the term and estate of ninety-nine years, hereby granted as aforesaid, and should within the space of six calendar months then next ensuing, by any deed or writing under his hand and seal, attested by two or more credible witnesses, signifying unto the said [*receiver*] such his or their intention, *Then* and in such case the term and estate hereby granted as aforesaid to the said [*receiver*] of and in the said (*g*) premises, and every part thereof, shall thenceforth cease, determine, and be void, to all intents and purposes whatsoever. AND *it is hereby agreed and declared,* that the said [*mortgagee*], his heirs, executors, administrators, or assigns, shall not bear or sustain, or be charged or chargeable with, or accountable for, any loss which may happen of the rents and profits of the said mortgaged premises, or any of them, by reason or means of any neglect, default, or breach of trust of the said [*receiver*], or any future collector or receiver of the same (*h*). PROVIDED AL-

Power to mortgagee to remove receiver, and determine his estate.

Agreement that mortgagee shall not be answerable for receiver.

Appointment of

FREEHOLD AND COPYHOLD.

(*g*) If there be also copyhold premises, say, "freehold premises, and every part thereof, and also the power and authority hereby given to the said [*receiver*] shall" &c.

Receiver's deficiencies and his salary to be wholly borne by mortgagors.

(*h*) From the whole tenor of the deed, the following addition may be unnecessary; yet such an express declaration seems prudent.

"*But* that all such loss, misapplication, or non-application, and every receiver's salary, shall be wholly borne and sustained by the said [*mortgagors*], their heirs, executors, or administrators."

ways, that these presents, or anything herein contained, shall not prevent or be construed to restrain the said [*mortgagee*], his heirs, executors, administrators, or assigns, from suing for, recovering, or compelling payment of the said sum of [*mortgage money*], or any part thereof, or from obtaining the possession of the said mortgaged premises, or foreclosing the equity of redemption thereof, in case default should be made in payment of the said sum of [*mortgage money*], or any part thereof, at the time appointed for payment thereof by the said indenture of appointment and release. In witness &c.

20. RECEIVER ON MORTGAGE OF FREEHOLD, OR OF FREEHOLD AND COPYHOLD.

receiver not to prevent mortgagee from compelling payment of mortgage-money, or from foreclosing.

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21. APPOINTMENT *of a* Receiver *by a Mortgagor, by way of* Power of Attorney (*a*), *with Power to the Receiver to appoint a* Deputy.

21. RECEIVER BY MORTGAGOR, BY POWER OF ATTORNEY.

This indenture, made &c., Between [*mortgagor*], of &c., of the first part; [*mortgagees*], of &c., of the second part; and [*receiver*], of &c., of the third part. Whereas by indentures of lease and release respectively bearing date the day before and even date with these presents, and expressed to be made between the said [*mortgagor*], of the one part, and the said [*mortgagees*], of the other part; *The* messuages and hereditaments set forth, described, or mentioned in the schedule to these presents (*b*), were, in consideration of the sum of [*mortgage money*] paid by the said [*mortgagees*] to the said [*mortgagor*], duly conveyed and assured by the said [*mortgagor*] unto and to the use of the said [*mortgagors*], their heirs and assigns, for ever: *But nevertheless subject* to a proviso for the redemption of the said hereditaments and premises, on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, unto the said [*mort-*

Parties.

Recital of mortgage in fee, from one to three or more trustees, or partners in trade.

(*a*) As an appointment of a receiver, by way of power of attorney, is used by some gentlemen, a form is therefore inserted. But that mode being liable to the objection stated *ante*, p. 76, it seems likely that it will gradually be generally disused, whenever the form by way of demise can, from the circumstances of the case, be effectually adopted. *Vide ante*, p. 574.

Appointment by demise is preferable.

(*b*) As to a description by a schedule where the parcels are long, *vide ante*, p. 576.

Parcels in schedule.

21. RECEIVER BY MORTGAGOR, BY POWER OF ATTORNEY.

gagees], or the survivors or survivor of them, his executors, administrators, or assigns, of the sum of [*mortgage money*], and interest for the same, after the rate of five pounds for one hundred pounds for a year, on or at the days or times and in manner therein mentioned. AND WHEREAS upon the treaty for the loan of the said sum of [*mortgage money*] pounds, it was stipulated and agreed, that for securing the punctual and regular payment of the interest of the said sum of [*mortgage money*] a receiver should from time to time be constituted and appointed for collecting and recovering the rents and profits of the said messuages and hereditaments. *And* that the said [*receiver*] should be the first receiver. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, *He* the said [*mortgagor*] (*c*), (with the consent and approbation of the [*mortgagees*], testified by their severally executing these presents), by these presents *doth* make, ordain, constitute, and appoint the said [*receiver*], his receiver, agent, and attorney, from time to time, in the name of him the said [*mortgagor*], to ask, demand, collect, and receive ALL and every the rents and profits of *All* and singular the messuages and hereditaments comprised in the said indentures of lease and release, and set forth and recited in the said schedule to these presents, of and from all and every or any of the present and future tenants and occupiers thereof respectively; or of the person or persons liable, or who shall be liable, to pay the same, as and when the said rents and profits shall from time to time become due and payable: AND in case of non-payment thereof, or of any part thereof, to take and use all such lawful remedies for recovering and obtaining the payment of the said rents and profits, or any of them, or any part thereof, by action, suit, distress (*d*), or otherwise, as shall be thought necessary: AND FURTHER, to do, perform, and execute all other acts, matters, and things needful and requisite for collecting and receiving the said rents and profits, as fully and effectually to all intents and purposes whatsoever, as the said [*mortgagor*] could or might himself do:

Recital of agreement to appoint receiver.

Testatum.

Appointment of receiver by mortgagor, with consent of mortgagees,

to collect rents of parcels mentioned in schedule.

In case of non-payment, to recover same by action, distress, &c.;

and to do all other requisite acts for collecting the rents as fully as mortgagor could do;

MORTGAGEES ALSO APPOINT.

(*c*) It seems prudent for the mortgagees to join in the appointment, *ut ante*, p. 586, (*mutatis mutandis*), for the reasons stated *ante*, p. 364.

(*d*) *Vide ante*, p. 579 (*k*).

21. RECEIVER BY MORTGAGOR, BY POWER OF ATTORNEY.

AND one or more attorney (*e*) or attornies under him, for all or any of the purposes aforesaid, to make, nominate, and appoint, and at will and pleasure to revoke such nominations, substitutions, and appointments respectively; and notwithstanding the same, to exercise all or any of the powers hereby given to him. AND the said [*mortgagor*] doth hereby order and direct all and every the tenants and occupiers of the said messuages and hereditaments to pay unto the said [*receiver*], or to his substitute or substitutes, all and every the rents and profits thereof: *And* doth hereby declare that the receipt and receipts of the said [*receiver*], or of his substitute or substitutes, shall be good and sufficient discharges to such tenants and occupiers respectively, for such rents and profits as they respectively shall pay to him or them. AND *it is hereby agreed and declared*, that all the rents and profits of the said hereditaments and premises, which shall be received by such substitute or substitutes of the said [*receiver*] as aforesaid, shall be paid by him or them to the said [*receiver*]; *And* that he, the said [*receiver*], shall stand and be possessed of the same, UPON TRUST that the said [*receiver*] shall from time to time, out of the rents and profits of the said capital and other messuages which shall be received by him under or by virtue of these presents, pay, or cause to be paid, to the said [*mortgagees*], or the survivors or survivor of them, his executors, administrators, or assigns, all the interest which shall from time to time become due or payable for or in respect of the said sum of [*mortgage money*], or any part thereof, on or at the days or times, and in the manner, in the said indenture of release mentioned and appointed for payment of the same: AND after payment thereof, shall in the next place deduct and retain, out of the said rents and profits, for his own use, a reasonable com-

with power to appoint attornies.

Direction to tenants to pay rents to receiver or to his substitute.

Either of their receipts to be sufficient discharges.

Rents received by substitute to be paid to receiver,

upon trust, out of rents and profits, to pay interest on mortgage money.

Retain for himself a compensation not exceeding £5 per

(*e*) The power to appoint a deputy is not usually inserted, a personal confidence being reposed in the receiver; and as he is allowed a salary for his trouble, it is generally expected that he will act himself. If there be no such power, and the receiver acts by deputy, the rule *delegatus non potest delegare* will be in full force, and he will be answerable for his deputy's deficiencies. But empowering him to appoint a deputy seems liable to abuse, as the receiver would not be answerable for the deputy's deficiencies, unless he was insolvent at the time of his appointment. *Vide ante*, p. 78. On the part of a mortgagor or grantor of an annuity, the power to appoint a deputy should be objected to unless under very extraordinary circumstances.

It seems prudent not to authorize a receiver to appoint a deputy.

21. RECEIVER BY MORTGAGOR, BY POWER OF ATTORNEY.

pensation and satisfaction for his care, pains, trouble, and expenses in collecting, receiving, and paying the said rents and profits in manner and for the purposes aforesaid, not exceeding one shilling in the pound upon the amount of the sum to be received by him from time to time: AND shall pay, or cause to be paid, all the clear residue and surplus of the said rents and profits of the said hereditaments and premises, which shall from time to time remain in his hands, after answering the purposes aforesaid, unto the said [*mortgagor*], his heirs, executors, administrators, or assigns, or to such person or persons as he or they shall direct. AND THE SAID [*receiver*] doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant and agree with the said [*mortgagor*], his executors, administrators, and assigns; and also with the said [*mortgagees*], their heirs, executors, and administrators, that he the said [*receiver*] will, from time to time, so long as he shall continue and be the collector and receiver of the rents and profits of the said messuages and hereditaments, use his utmost endeavours faithfully to collect and receive the same: AND truly and punctually pay, or cause to be paid, in manner and for the purposes aforesaid, all such sum and sums of money as shall from time to time be collected and received by him, by virtue of and under these presents. AND THE SAID [*mortgagor*] doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*mortgagees*], their heirs, executors, administrators, and assigns, that he the said [*mortgagor*] will not, without the consent in writing of the said [*mortgagees*], or the survivors or survivor of them, his executors, administrators, or assigns, first had and obtained, revoke (*g*) the powers or authorities hereby given to the said [*receiver*], or to be given to any such future receiver, as hereinafter is mentioned, or any of them; or do or suffer, or cause to be done or suffered, any act, deed, matter, or thing, whereby the said powers or authorities, or any of them, shall or may become void and of no effect; or hinder or obstruct the said [*receiver*], or any future receiver, to be appointed as hereinafter is mentioned, in recovering, collecting, or receiving all or any of the rents and profits of the hereditaments and premises aforesaid, upon and for the

cent. on the sum to be received;

and pay residue to mortgagor.

Covenant by receiver to collect and duly apply rents.

Covenant by mortgagor not to revoke appointment, without mortgagee's consent; or obstruct receiver in collecting rents.

(*g*) *Vide ante*, p. 368 (*l*).

trusts and purposes aforesaid, during such time as the said sum of [*mortgage money*], or any part thereof, shall remain and continue on the above-recited security. AND FURTHER, that in case the said [*receiver*] should by death, or other disability, be disqualified or rendered incapable to collect and receive the rents and profits of the said messuages and hereditaments, or should refuse or neglect to proceed therein in manner aforesaid, or should otherwise misbehave himself in the trusts hereby in him reposed, during the continuance of the said sum of [*mortgage money*], or any part thereof, upon the security aforesaid, *Then* and in any of the said cases, he the said [*mortgagor*], his heirs or assigns, will or shall join with the said [*mortgagees*], or the survivors or survivor of them, his heirs, executors, administrators, or assigns, in removing the said [*receiver*], if then living, from the said employment: *And* will or shall duly constitute, appoint, and authorize such other person or persons in the place and stead of the said [*receiver*], as they the said [*mortgagees*], or the survivors or survivor of them, his heirs, executors, administrators, or assigns, shall from time to time nominate, direct, or appoint, to collect, receive, and pay the rents and profits of the said messuages and hereditaments, upon and for the trusts and purposes hereinbefore mentioned: *And* so from time to time, when and so often as the like case shall happen, until the said sum of [*mortgage money*], and all interest in respect thereof, shall be fully satisfied and paid. AND that in case the said [*mortgagor*], his heirs or assigns, should refuse or neglect so to do for the space of one calendar month next after the death, incapacity, or misbehaviour of the said [*receiver*], or any other receiver, so to be constituted and appointed as aforesaid, *Then*, and in that case, and so from time to time, as often as the same shall happen, it shall and may be lawful to and for the said [*mortgagees*], or the survivors or survivor of them, his executors, administrators, or assigns, if he or they should think fit, without the concurrence or consent of the said [*mortgagor*], his heirs or assigns, to constitute and appoint some fit person to collect, receive, and pay the said rents and profits, upon and for the trusts and purposes aforesaid, with such reasonable salary for his care, pains, trouble, and expenses, as the said [*mortgagees*], or the survivors or survivor of them, his executors, administrators, or assigns, shall think fit, not exceeding one shilling in the pound, upon the amount of the sums to be

21. RECEIVER BY MORTGAGOR, BY POWER OF ATTORNEY.

In case of receiver's death incapacity, &c., mortgagor to join with mortgagees in appointing such new receiver as they shall nominate;

and so from time to time.

In case of mortgagor's neglect, mortgagees alone to appoint new receiver.

21. RECEIVER BY MORTGAGOR, BY POWER OF ATTORNEY.

from time to time received as aforesaid. PROVIDED ALWAYS, *and it is hereby declared and agreed,* that the said [*receiver*], and every future collector or receiver, so to be appointed as aforesaid, shall be, and be considered, the agent of the said [*mortgagor*] (*h*): *And* that the said [*mortgagees*], or any or either of them, or the heirs, executors, administrators, or assigns of them or any of them, shall not in any case be charged with, or answerable for, any loss or misapplication of the rents and profits of the said capital and other messuages, tenements, lands, and hereditaments, or any part thereof, by reason of any default, neglect, or breach of trust of the said [*receiver*], or any future collector or receiver, so to be appointed as aforesaid; *But* that such loss, misapplication, or non-application, and every receiver's salary, shall be wholly borne and paid by the said [*mortgagor*], his heirs or assigns. PROVIDED ALSO, that the said [*receiver*], or such other receiver or receivers as aforesaid, shall not act under, or exercise the powers or authorities herein contained, or any of them, until some half-yearly payment of the interest to become due, for or in respect of the said sum of [*mortgage money*], shall be in arrear and unpaid by the space of three calendar months (*i*) next after the same ought to be paid, by virtue of the said indenture of release bearing even date with these presents, anything herein contained to the contrary notwithstanding. IN WITNESS &c.

Receiver to be the agent of mortgagor:

and mortgagees not to be answerable for any loss occasioned by receiver.

Receiver not to act till half a year's interest be in arrear three months.

(*h*) Some gentlemen add,

"for every purpose, other than and except the purpose of applying a competent part of the rents and profits of the said hereditaments in satisfaction of the said (annuity) (*or* the interest to become due on the said principal sum of £——)."

The clause that the receiver shall be the agent of the mortgagor seems not to be important.

The clause that the receiver shall be the agent of the mortgagor seems to have great importance attached to it by some gentlemen. For it is said, it should be distinctly stated that the receiver, though appointed by the mortgagee, annuitant, &c., after default of the mortgagor or grantor to concur in the appointment, should be the agent of the mortgagor, &c.: Pres. MSS. But that clause is not commonly inserted, the usual indemnity clause being generally thought quite sufficient.

(*i*) *Vide ante,* p. 587 (*k*).

22. APPOINTMENT *of a* RECEIVER *of Rents and Profits of Lands and of Tithes, by a* POWER OF ATTORNEY, *for securing the payment of Interest due on a* MORTGAGE, *and an* ANNUITY *charged on the same Lands and Tithes.*

22. RECEIVER OF RENTS AND TITHES TO PAY INTEREST AND ANNUITY.

THIS INDENTURE, made &c., BETWEEN [*mortgagor*], of &c., of the first part; [*mortgagee*], of &c., of the second part; [*grantee*], of &c., of the third part; and [*receiver*], of &c., of the fourth part. WHEREAS (*recite a demise to mortgagee of a messuage, tithes, &c., mentioned in a schedule hereto, for one thousand years, to secure mortgage-money and interest; and grant of an annuity, bearing even date herewith, from mortgagor to grantee, to be issuing out the same messuages, tithes, &c.*) AND WHEREAS, for the punctual and regular payment of the interest of the said sum of [*mortgage-money*], and of the said annuity of [*annuity*] respectively, it hath been agreed that the said [*receiver*] should be appointed receiver of the rents and profits of the messuages and hereditaments mentioned in the said schedule hereunto annexed, or hereunder written. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, *He* the said [*mortgagor*] (*a*), (with the privity of the said [*mortgagee*] and [*grantee*], testified by their severally sealing and delivering these presents), *hath* nominated, constituted, and appointed, *And* by these presents *doth* nominate, constitute, and appoint the said [*receiver*] to be receiver, agent, and attorney, from time to time, in the name of the said [*mortgagor*], to ask, demand, collect, and receive, ALL and every the rents and profits of the said messuage and hereditaments, and the tithes mentioned in the schedule hereunto

Parties.

Recital of mortgage for years;

grant of annuity;

agreement to appoint receiver.

Testatum.

Appointment by grantor of receiver attorney, to collect rents and tithes mentioned in schedule.

(*a*) It seems advisable, in such a case as the above, to make the appointment by a joint demise of the mortgagor, mortgagee, and grantee, to the receiver for his life, *ut ante*, p. 596. Or if it be done by a power of attorney, for all of them to join in the appointment, *ut ante*, p. 364, *mutatis mutandis*. Whichever mode be adopted, the special covenants, &c., in the above form, will suggest the necessary variations.

A joint demise, or a joint power of attorney, seems preferable to the above.

22. RECEIVER OF RENTS AND TITHES TO PAY INTEREST AND ANNUITY.

annexed or hereunder written, and all compositions, commutations, or rent-charges in lieu thereof, of and from the present and future tenants and occupiers thereof, and the person and persons liable to pay the same respectively, as and when the same shall from time to time become due and payable; AND in case of the non-payment thereof, or non-delivery thereof, to take and use such lawful remedies for recovering and obtaining payment and delivery of the said rents, profits, and tithes, or any part thereof, by action, suit, distress, or otherwise, as shall be thought necessary: AND FURTHER, to do, perform, and execute all other matters and things needful and requisite for collecting and receiving the said rents, profits, and tithes, as fully and effectually, to all intents and purposes, as he the said [*mortgagor*] could or might do. AND the said [*mortgagor*] doth hereby order and direct all and every the tenants and occupiers of all the said premises respectively, and the persons liable to pay the said tithes, to pay unto the said [*receiver*] all and singular the rents and profits of the said premises, and the said tithes, for the purposes hereinafter mentioned: AND doth hereby declare, that the receipts of the said [*receiver*] shall be good and sufficient discharges to such tenants or occupiers and persons, for such rents, profits, and tithes, as they shall respectively pay or deliver to him. AND *it is hereby agreed and declared*, between and by the parties to these presents, that all and every the rents, profits, and tithes, which shall be so received by the said [*receiver*], shall be held by him, UPON TRUST that he the said [*receiver*] shall dispose of so much and such part of the said tithes as shall be received or taken in kind, for the best price or prices that can be reasonably obtained for the same: AND shall, with and out of the monies to arise by the sale of such tithes as aforesaid, and with and out of all other monies which shall be received by the said [*receiver*], by virtue of these presents, in the first place, from time to time, pay all taxes, rates, assessments, and impositions whatsoever now or hereafter to be taxed, charged, assessed, or imposed upon or in respect of the said premises, and which the respective tenants or occupiers thereof shall not be liable to pay: AND in the next place, pay to the said [*mortgagee*], his executors, administrators, and assigns, by two equal half-yearly payments, on the —— day of ——, and the —— day of ——, in every year, the interest for the said sum of [*mortgage money*];

And on non-payment, to recover same by action, distress, &c.,

and to do all other requisite acts.

Direction to tenants and occupiers to pay tithes and rents to receiver.

Receiver's receipts to be sufficient discharges.

Declaration that receiver shall hold same,

upon trust to sell tithes received in kind;

and out of all the monies which shall be received by him,

to pay taxes, &c.;

to pay interest on mortgage half-yearly;

22. RECEIVER OF RENTS AND TITHES TO PAY INTEREST AND ANNUITY.

AND in the next place, pay to the said [*grantee*], his executors, administrators, and assigns, the said annuity of [*annuity*], on the days or times when the same is made payable by the said indenture bearing even date with these presents, as hereinbefore is mentioned: AND in the next place, deduct and retain for his own use, so much and such sums of money not exceeding after the rate of five pounds for every one hundred pounds received, as he shall reasonably deserve, as a compensation and satisfaction for his care, pains, trouble, and expenses in receiving and paying the said rents, profits, and tithes, in manner and for the purpose aforesaid: AND shall pay the clear residue and surplus of the said rents, profits, and tithes, which shall remain, after answering the several purposes aforesaid, unto the said [*mortgagor*], his (*b*) executors, administrators, or assigns. AND THE SAID [*receiver*], doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*mortgagor*], his (*b*) executors, administrators, and assigns; and also with the said [*mortgagee*], his executors, administrators, and assigns; and also with the said [*grantee*], his executors, administrators, and assigns, that he the said [*receiver*] will from time to time, so long as he shall be and continue to be the collector or receiver of the rents, profits, and tithes of the premises mentioned in the said schedule, or any of them, in manner aforesaid, use his utmost endeavours faithfully to collect and receive the same: *And* truly and punctually pay, or cause to be paid, in manner, and to and for the ends, intents, and purposes aforesaid, all such monies as shall from time to time be collected or received by him the said [*receiver*], by virtue of, or under the aforesaid powers or authorities. AND THE SAID [*mortgagor*] doth, for himself, his heirs, executors, and administrators, covenant with the said [*mortgagee*], his executors, administrators, and assigns, and also with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*] will not, without the consent of the said [*mortgagee*] and [*grantee*], their execu-

to pay annuity;

to retain expenses of receivership, not exceeding £5 per cent.;

and pay residue to mortgagor.

Covenant by receiver with mortgagor, mortgagee, and grantee to collect rents and tithes;

and duly apply same.

Covenant by mortgagor, with mortgagee and grantee, not without their consent to revoke powers given to receiver, or ob-

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(*a*) As this power of attorney would be revoked by the death of the mortgagor, it seems that no surplus of the rents, &c. can by possibility become payable from the receiver to the mortgagor's heirs. *Vide ante*, p. 365 (*k*). But if the appointment be made by a joint demise, or joint appointment, of the mortgagor, mortgagee, and grantee, the word *heirs* should be added in both places.

The reason why the word *heirs* is omitted.

22. RECEIVER OF RENTS AND TITHES TO PAY INTEREST AND ANNUITY.

tors, administrators, or assigns, first had and obtained in writing, signed, with their hands, revoke the powers or authorities hereby given to the said [*receiver*], or any of them; or do, or suffer to be done, any act, matter, or thing whereby the said powers or authorities, or any of them, may or shall become void and of no effect; or hinder or obstruct him the said [*receiver*], or any future receiver, to be appointed as hereinafter is mentioned, in recovering, collecting, or receiving all or any of the said rents, profits, and tithes of the said premises, upon and for the trusts, intents, and purposes aforesaid, during such time as the said sum of [*mortgage money*], or any part thereof, shall remain on the security of the hereditaments and premises mentioned in the said schedule hereunder written or hereunto annexed; or during such time as the same hereditaments and premises shall remain charged and chargeable with the payment of the said annuity, or any part thereof. AND FURTHER, that in case the said [*receiver*] should by any disability be disqualified or rendered incapable to collect or receive the said rents, profits, and tithes, or should refuse or neglect to proceed therein in manner aforesaid, or should otherwise misbehave in the trusts hereby in him reposed, whilst the said sum of [*mortgage money*], and the said annuity, or either of them, or any part thereof respectively, shall remain and continue or be payable on the aforesaid securities, *Then*, he the said [*mortgagor*], his heirs or assigns, will or shall in any of the said cases, except the death of the said [*receiver*], join with the said [*mortgagee*] and [*grantee*], their executors, administrators, and assigns, in removing the said [*receiver*] from the said employment; *And* will or shall, in any of the said cases, duly constitute, appoint, and authorize such other fit person or persons in the place or stead of the said [*receiver*], as they the said [*mortgagee*] and [*grantee*], their executors, administrators, or assigns, shall from time to time nominate or appoint, to collect, receive, and pay the said rents, profits, and tithes, upon and for the trusts, intents, and purposes hereinbefore mentioned: *And* so from time to time, when and so often as the like case shall happen, until the said sum of [*mortgage money*], and all interest for the same, shall be paid to the said [*mortgagee*], his executors, administrators, or assigns, and the said hereditaments and premises shall be released, or otherwise discharged from the payment of the said annuity. AND that in case the said [*mortgagor*], his

struct him in executing his office;

and in case of receiver's incapacity, &c., to join in removing him;

and then appoint such new receiver as mortgagee and grantee shall nominate;

And so from time to time.

22. RECEIVER OF RENTS AND TITHES TO PAY INTEREST AND ANNUITY.

heirs or assigns, should refuse or neglect so to do for the space of three calendar months next after the death, incapability, or misbehaviour of him the said [*receiver*], or any other receiver so to be constituted and appointed as aforesaid, *Then* and in such case, and so from time to time, as often as the like case shall happen, it shall and may be lawful to and for the said [*mortgagee*] and [*grantee*], their executors, administrators, or assigns, if they should think fit, without the consent or concurrence of the said [*mortgagor*], his heirs or assigns, to constitute or appoint some fit person to collect, receive, and pay the said rents, profits, and tithes, upon the trusts, and for the intents and purposes aforesaid, with such reasonable salary for his care, pains, trouble, and expenses as the said [*mortgagee*] and [*grantee*] should think fit, not exceeding five pounds for every one hundred pounds to be received: PROVIDED ALWAYS, that the said [*mortgagee*] and [*grantee*], their executors, administrators, or assigns, shall not in anywise be charged with, or answerable for, any loss, misapplication, or non-application of the said rents, profits, and tithes of the said premises, or any part thereof, by reason of any default, neglect, or breach of trust, of or in the said [*receiver*], or any future collector or receiver to be appointed as aforesaid: *And* that such loss, misapplication, or non-application, and every receiver's salary, shall be wholly borne and paid by the said [*mortgagor*], his heirs, executors, or administrators. PROVIDED ALSO, that he the said [*receiver*], or other the receiver or receivers so to be appointed as hereinbefore is mentioned, shall not act and assist in the execution of the trusts and powers hereinbefore contained, unless and until some one half-yearly payment of the interest of the said sum of [*mortgage money*], or some one half-yearly payment of the said annuity of [*annuity*], shall be in arrear for the space of three calendar months (*c*). IN WITNESS &c.

case of mortgagor's neglect, mortgagee and grantee may appoint new receiver.

Mortgagee and grantee not to be answerable for receiver's deficiencies;

but same, with every receiver's salary, to be wholly borne by mortgagor.

Receiver not to act until half a year's interest or half a year's annuity be in arrear three months.

THE SCHEDULE TO WHICH THE ABOVE (*or* WITHIN) WRITTEN INDENTURE REFERS.

Schedule.

(*c*) If brevity be not very desirable, it may be prudent to add a proviso, that the receiver's appointment shall not preclude mortgagee or grantee from exercising any of their remedies, *ut ante*, p. 584, 595.

23. RECEIVER BY TRUSTEES UNDER A POWER, TO PAY INTEREST AND ANNUITIES.

23. APPOINTMENT *of a* RECEIVER *of the Rents and Profits of Freehold and Leasehold Premises, by Two Trustees* UNDER A POWER *in a voluntary Settlement, and at the request of the Tenant for Life, for the purpose of paying Interest on a Mortgage of the Premises, and Interest on several Sums; and also several Life Annuities given by the voluntary Settlement, and to pay the Residue to the Tenant for Life.*

Parties.

THIS INDENTURE, made &c., BETWEEN [*trustee*], of &c., and [*other trustee*], of &c., of the first part; [*tenant for life*], of &c., of the second part; and [*receiver*], of &c., of the third part. WHEREAS by indentures of lease and release, bearing date respectively on or about the —— and —— day of —— 18—, and made between the Right Honourable —— Baroness Dowager —— (therein mentioned to be the widow of the Right Honourable —— Lord ——, Baron —— of &c., in Ireland), since deceased, of the one part, and the said [*trustees*], of the other part; in consideration of the natural love and affection which the said Baroness Dowager —— bore towards her relations thereinafter named, and for other considerations therein mentioned, *She* the said Baroness Dowager —— *did* grant, bargain, sell, release, assign, and confirm unto the said [*trustees*], their heirs, executors, administrators, and assigns, *All that* the manor of &c., with their and every of their rights, royalties, members, and appurtenances, *To hold* the same, (*Subject* nevertheless to a mortgage therein mentioned to have been made thereof by the said Baroness Dowager ——, to [*mortgagee*], of &c., for one thousand years, by indenture bearing date the —— day of ——, for securing the sum of [*mortgage-money*] and interest), unto and to the use of the said [*trustees*], their heirs, executors, administrators, and assigns, according to the nature and quality, and for and during the continuance of the estate and interest of the said ——, Baroness Dowager —— therein: *Upon trust* for her the said Baroness Dowager ——, and her assigns, for life; *And* from and immediately after her decease, *Upon trust* that they the said [*trustees*], and

Recital of lease, release, and assignment of freeholds and leaseholds to trustees, subject to a previous mortgage;

upon trust for settlor for life;

and after her decease, upon

the survivor of them, and the heirs, executors, administrators, and assigns of such survivor, should, by mortgaging, selling, or otherwise disposing of the said manor, hereditaments, and premises, or any of them, or any part thereof, for all or any part of the estate, term, or interest for which the same premises are thereby released, assigned, or otherwise assured; or by any other reasonable ways and means, levy and raise the sum of [*mortgage money*], and pay and apply the same in paying off and discharging the principal sum of [*mortgage money*] so secured by the said mortgage: *And also* levy and raise, and pay the several principal sums of money thereinafter mentioned; that is to say, the sum of £—— to the said [*trustee*], the sum of £—— to the said [*other trustee*], the sum of £—— to ——, the sum of £—— to &c., the sum of £—— to ——, the wife of &c., for her own sole and separate use: *And* should from time to time, by and out of the rents, issues, and profits of the same premises, or such part or parts thereof as should not have been sold under the trusts aforesaid, levy and raise, and pay and satisfy all such interest, as from and after the decease of the Baroness Dowager ——, should become due and payable for the said principal sum of [*mortgage money*], or any part thereof: *And also* levy and raise and pay interest at the rate of five pounds per cent. from the decease of the said Baroness Dowager ——, for the aforesaid several sums of £——, £——, &c., or such of them, or such part thereof respectively, as should become due and payable, and should remain unpaid: *And also* levy and raise and pay all interest which from time to time should become payable, for any sum or sums of money which might be raised by way of mortgage under the trusts aforesaid: *And subject thereto,* from time to time, by and out of the rents, issues, and profits of the said manor, hereditaments, and premises, levy and raise and pay the several annuities or yearly sums of money thereinafter mentioned; that is to say, to ——, of &c., an annuity or yearly sum of £——, for her life; to ——, an annuity or yearly sum of £——, for her life; and to ——, a like annuity or yearly sum of £——, for life; the same annuities or yearly sums repectively to be free from taxes and all other deductions whatsoever, and to be paid by two equal half-yearly payments in every year. *And subject* and without prejudice to the several trusts thereinbefore declared, should stand and be seised of, and interested in the said

23. RECEIVER BY TRUSTEES UNDER A POWER, TO PAY INTEREST AND ANNUITIES.

trust, by mortgage or sale, to discharge mortgage-money;

and pay several sums given by the deed, to evade the legacy duty;

and out of the rents of premises not sold to pay interest on mortgage:

and interest from the death of the donor, on the several sums given by the deed;

and pay interest on sums to be raised by mortgage;

and to pay several annuities to servants;

and subject to the several trusts, to stand seised of premises in trust

23. RECEIVER BY TRUSTEES UNDER A POWER, TO PAY INTEREST AND ANNUITIES.

manor, hereditaments, and premises, or such part or parts thereof as should not have been sold under the trusts aforesaid, with their rights, members, and appurtenances, (but subject to any mortgage or mortgages which might have been made under the trusts aforesaid), *In trust* for the said [*tenant for life*] (therein mentioned to be great nephew of the said Baroness Dowager ——), and his assigns, for his life. *And* after the decease of the said [*tenant for life*], *In trust* for the first and every other son of the said [*tenant for life*], lawfully begotton, or to be begotten, severally and successively, according to seniority, in tail general, with divers remainders over. AND in the indenture now in recital there was contained a proviso, declaring that it should be lawful for the said [*trustees*], and the survivor of them, and the heirs, executors, administrators, and assigns of such survivor, from time to time, to appoint an agent or receiver to manage the saidman or and hereditaments, and to receive the rents, issues, and profits thereof, and to place and displace such agent or receiver at their or his pleasure, and to allow such agent or receiver such a salary or other compensation for his trouble therein as to the said [*trustees*], or the survivor of them, or the heirs, executors, administrators, or assigns of such survivor, should seem proper. AND WHEREAS the said Baroness Dowager —— hath departed this life since the execution of the above-recited indenture. AND WHEREAS no sale or mortgage hath hitherto been made of the hereditaments and premises comprised in the said indentures, or any part or parts thereof, in pursuance of the trusts therein expressed in that behalf. AND WHEREAS the aforesaid mortgage debt of [*mortgage money*] and the eight other principal sums so directed to be raised under the trusts of the said indenture of release as aforesaid, still remain unpaid; and a further advance of £—— having been made by the said [*mortgagee*], there is now due to him, on his aforesaid mortgage security, the principal sum of [*total mortgage money*]. AND WHEREAS the said several persons, to whom the aforesaid several annuities are directed to be paid for their respective lives, are all living. AND WHEREAS the said [*trustees*] have, at the request of the said [*tenant for life*], consented and agreed to appoint the said [*receiver*] receiver of the rents of theestates comprised in the said indentures, with such powers and in such manner as hereinafter expressed, NOW THIS INDENTURE WITNESSETH, that in pursuance,

for settlor's nephew for life;

remainder in trust for his first and other sons;

with remainders over;

power to appoint receiver;

settlor's death;

no sale or mortgage has been made;

mortgage debt, and the several sums given, still due;

further advance by mortgagee;

annuitants are still living;

agreement by trustees, at tenant for life's request, to appoint receiver.

Testatum.

23. RECEIVER BY TRUSTEES UNDER A POWER, TO PAY INTEREST AND ANNUITIES.

and by virtue, and in exercise of the power for this purpose to the said [*trustees*] by the said indenture of release given and reserved, and of all other powers and authorities whatsoever enabling them in this behalf, *They* the said [*trustees*], at the request and by the direction of the said [*tenant for life*], (testified by his sealing and delivering these presents), by these presents *do*, and each of them *doth*, nominate, constitute, and appoint the said [*receiver*] to be the true and lawful attorney, receiver, or agent of them and each of them, with such powers and authorities, and for such purposes, as are hereinafter mentioned, that is to say, *With* full power and authority, from time to time, in the names of them the said [*trustees*], to ask, demand, recover, and receive of and from all and every the present and future tenants and occupiers of the manors, messuages, hereditaments, and premises hereinbefore described, and so by the said indenture released and assigned as aforesaid, and every or any part thereof; and of and from all and every other persons and person liable to pay the same, ALL rents, arrears of rent, and all and every sums and sum of money that is or are, or shall or may be due or owing or payable for or in respect of the said manors, messuages, hereditaments, and premises, or any part thereof: AND on receipt of such rent or rents, or arrears of rent, or sums or sum of money, or any part thereof respectively, for them the said [*trustees*], and in their names, or in the name of the said [*receiver*], to give, sign, and execute any receipt or receipts, acquittance or acquittances, release or releases, or other discharge or discharges for the same: AND on non-payment thereof, or any part thereof, respectively, for them the said [*trustees*], and in their names, to bring, commence, carry on, and prosecute any action or actions, suit or suits, or other proceeding or proceedings whatsoever, and to take, or cause to be taken, any distress or distresses, or otherwise to act therein according to law: and to make, or cause to be made, any avowry or avowries, cognizance or cognizances, of or for such distress or distresses: AND *generally* to do, perform, and execute any act, deed, matter, or thing whatsoever, relative to the receipt or recovery of such rents, arrears of rent, and sums of money as aforesaid, or any part thereof, as fully, amply, and absolutely, to all intents and purposes, as they the said [*trustees*], as such trustees as aforesaid, might or could do in their own proper persons: *They* the said [*trustees*] hereby giving and granting unto the said

Appointment of a receiver by trustees, in pursuance of a power, and at the request of tenant for life;

with power to receive and recover rents;

and give acquittances;

and on non-payment, to bring actions or make distresses;

and generally to do any act, &c., as fully as appointors could;

they hereby giving their whole power

23. RECEIVER BY TRUSTEES UNDER A POWER, TO PAY INTEREST AND ANNUITIES.

[*receiver*] their full and whole power therein, and declaring that they will ratify and confirm all and whatsoever he the said [*receiver*] shall do, or cause to be done, in or about the premises, by virtue hereof. AND *it is hereby agreed and declared*, that the said [*receiver*] shall pay and apply all and singular the rents and sums of money so to be received by him as aforesaid (after retaining and deducting thereout a salary or allowance of one shilling in every pound, as a compensation for his trouble in collecting and recovering the same rents and sums of money) in manner following, that is to say; in the first place, in keeping down the interest of the aforesaid mortgage debt [*total mortgage money*], and of the several other principal sums of money which, under the trusts in the said indenture of the —— day of ——, are so directed to be raised as hereinbefore is mentioned and recited: And also in the payment of the said several annuities, directed to be paid under the trusts of the same indenture, or such of them as shall be for the time being subsisting. AND *it is hereby agreed and declared*, that the said [*receiver*] shall pay the ultimate surplus of the said rents and sums of money so to be received by him as aforesaid, to the said [*tenant for life*], or his assigns, or to the person or persons for the time being entitled by virtue of the said indenture of the —— day of ——, to the possession of, or the receipt of the rents and profits of the said manor, hereditaments, and premises, subject to the trusts in the same indenture expressed, for raising the said mortgage debt, and other the principal sums therein mentioned, and the interest thereof, and the several annuities so directed to be raised as aforesaid. AND THE SAID [*receiver*] doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*trustees*], and each of them, and the heirs, executors, and administrators of them and each of them, and also with and to the said [*tenant for life*], his executors, administrators, and assigns, that he the said [*receiver*] will collect and receive, and faithfully pay and apply, all and every the rents and sums of money to be received by him by virtue of these presents, in such manner as hereinbefore is directed touching the application thereof. AND will at all times hereafter save, defend, keep harmless, and indemnified, the said [*trustees*], and each of them, and their heirs, executors, administrators, and assigns, and the lands and tenements, and the goods and chattels of them and each of them, of

therein, and agreeing to ratify receiver's acts.

Declaration that receiver shall apply rents, after deducting his salary,

in keeping down the interest of the mortgage debt, and of the several sums given by the settlor;

in paying the annuities;

and pay the surplus to tenant for life, or to the persons entitled to the premises.

Covenant by receiver, with trustees and tenant for life, to collect and duly apply rents;

and indemnify trustees from all actions, &c. on account of his misapplication of rents.

from, and against all actions, costs, suits, damages, claims, and demands whatsoever, for, or in respect of, or on account of the misapplication or non-application of the same rents and sums of money, or any of them, or any part thereof, or otherwise in relation thereto. IN WITNESS &c.

23. RECEIVER BY TRUSTEES UNDER A POWER, TO PAY INTEREST AND ANNUITIES.

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24. APPOINTMENT *of a* STEWARD (*a*) *of a Manor or Manors.*

24. STEWARD OF A MANOR.

KNOW ALL MEN BY THESE PRESENTS, *That* I [*lord* (or *lady*)], of &c. (*b*) *have* given and granted, *And* by these presents *do* give and grant unto [*steward*], of &c., gentle- Grant.

(*a*) A voluntary appointment of a steward of a manor by a lord or lady, solely seised of the manor, is frequently notified to the steward by word or letter, without any formal appointment being made. For a steward, either of a court baron or of a court leet, Co. Litt. 61. b., may be retained by parol; and this retainer by parol is as effectual in all points until the steward is discharged, as the most effectual institution by patent or deed. A steward thus retained may examine a feme coverte, or take a surrender, either in or out of Court, although there be no special custom to warrant: *Smithson* v. *Cage*, Cro. Jac. 526; or make voluntary admittances, or do any other act incident to the office of a steward, as well as if he had a grant thereof by a patent or deed. Co. Cop. s. 45, Tr. 104: *Harris and Jay*, 4 Co. 30 a.: *Lady Holcroft's case*, 4 Co. 30 b.; Hargr. n. Co. Litt. 59. a. (1); Gilb. Ten. 221, 313. But a patent is necessary to the making of stewards of the King's manors. *Harris and Jay*, 4 Co. 30 a.; Cro. Eliz. 699; Co. Cop. s. 45, Tr. 104; Hargr. n. Co. Litt. 61. b. (1); 5 Gwil. Bac. Abr. 189; *vide* 1 Anne, st. 1, c. 7, ss. 5 & 8. So in the case of a corporation aggregate, a patent or deed is requisite. Co. Cop. s. 45, Tr. 105. See further, 19 Vin. Abr. 596, *Steward*, (F.); Com. Dig. *Copyhold*, (R. 5); *Leet*, (M. 1). [The acts of a steward *de facto*, like those of a lord *de facto*, are valid so far as they are merely ministerial. *Doe* d. *Burgess* v. *Thompson*, 1 Nev. & P. 215; 5 Ad. & El. 532.]

A steward appointed by parol, by one solely seised, has the same powers as if appointed by deed.

But it is otherwise as to the steward of the King, or of an aggregate corporation.

[Surrenders may by custom be taken by another person than the steward or the lord, as where S., holding, by patent from the lord, the office of clerk of the castle of F. within the manor, claimed a customary right to take surrenders, concurrently with the steward's right. *Doe* d. *Stilwell* v. *Mellersh*, 1 Nev. & P. 30; 5 Ad. & El. 540.]

(*b*) If it be wished that the stewardship should continue, notwithstanding the lord's decease, add,

TO CONTINUE AFTER LORD'S DEATH.

"for me, my heirs and assigns, *have*" &c.

24. STEWARD OF A MANOR.

man, THE OFFICE of steward of my manor (*or*, manors) of ——, in the county of ——, (and of every of them): AND I

Appointment.

have constituted and appointed, *And* by these presents *do* constitute and appoint him the said [*steward*] steward of the said manor (*or*, manors, and of every of them), to keep and hold all courts baron and customary courts, belonging to the said manor (*or*, manors, or any of them), at the usual times the same have been accustomably holden, and at such other times as he the said [*steward*] shall think fit and requisite. To HAVE, hold, and enjoy the said office of steward, and to take and receive all and singular the fees and profits thereto belonging, by him the said [*steward*], or his sufficient deputy, for and during (*c*) my will and pleasure (*d*)

Habendum during pleasure.

TO CONTINUE AFTER LORD'S DEATH.

(*c*) If the stewardship be to continue, notwithstanding the lord's decease, say,

"for and during the will and pleasure of me the said [*lord*], my heirs and assigns."

FOR LIFE.

If for life, say,

"for and during the life of him the said [*steward*]."

[J. The lord of a manor may, by deed, grant the stewardship of the manor and of the courts thereto belonging for the life of the grantee. Litt. 378; Co. Litt. 233. b.: *Bartlett* v. *Downes*, 3 B. & Cr. 616.J.]

DURING GOOD BEHAVIOUR.

If during good behaviour, say,

"for and during such time as he the said [*steward*] shall well and faithfully demean and behave himself in his said office."

The stewardship of a court leet cannot be granted for years, but of a court baron may.

Where one made a grant for years of the stewardship of a court leet and court baron, it was held to be void as to the court leet, being a judicial office; but good as to the court baron, where the office was merely ministerial, the suitors being the judges of that court: but the grant appearing afterwards to be for years, determinable upon the death of the lessee, it was held good for both; because there was no danger of its going to executors or administrators. *Howard* v. *Wood*, Sir T. Jones, 126; 2 Lev. 245, *S. C. ante*, p. 375.

Discharged steward, an attorney, compelled by *mandamus* to deliver court-rolls.

(*d*) In the case of an attorney whose stewardship is determined, the court of law of which he is admitted will exercise a summary jurisdiction to compel him to deliver up the court-rolls and muniments of his employer. *Ex parte Corpus Christi College*, 6 Taunt. 105. See also *Ex parte Grubb*, 5 Taunt. 206. *Cocks* v. *Harman*, 6 East, 405. *Hughes* v. *Mayre*, 3 T. R. 275. [J. Although a solicitor has a lien upon all papers delivered to him in that character, not only for professional business in the matter of the papers, but for all professional business whilst they remain in his hands; yet he has no lien, as solicitor, on papers which he receives as steward. *Chapernown* v. *Scott*, 6 Madd. 93.J.] [*Vide infra*,

[And I hereby authorize the said [*steward*] from time to time to make and execute any voluntary grants of all or any customary or copyhold lands within the said manor, and to give to the tenants thereof licenses to demise, or otherwise, as he the said [*steward*] shall deem expedient.] And also to appoint any deputy or deputies for all or any of the purposes aforesaid, with all or any of the powers of the said [*steward*] as such chief steward, and with power to such deputy to appoint any sub-deputy. In witness whereof, I, the said [*lord*], have hereunto set my hand and seal, the —— day of —— 18— (*e*). 24. steward of a manor.

Signed, sealed, and delivered, in the presence of } Attestation.

Vol. 5, p. 8. The steward is bound to allow inspection of the rolls by all parties having a *primâ facie* title, although no cause is depending. *Rex* v. *Lucas*, 10 East, 235: *Rogers* v. *Jones*, 5 D. & Ry. 484. See *Ex parte Hutt*, 7 Dowl. P. C. 690.]

(*e*) If the grant or appointment be made by letters patent, deed, or other writing, the stamp duty on it must be charged according to the annual profits of the stewardship, as regulated by the 55 Geo 3, c. 184, Sched. part 1, tit. Grant. Stamp.

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25. GRANT *of the* Stewardship *of Courts of several* Manors, *in some of which the Person appointing is* solely seised, *and in the others, of* undivided Parts. 25. steward of manors.

To all to whom these presents shall come, I [*lord*], of &c., *send greeting*. Know ye, that I, the said [*lord*], for divers good causes and considerations me thereunto moving, *have*, for me, my heirs and assigns, given and granted, *And* by these presents *do* give and grant unto [*steward*], of ——, in the county of ——, gentleman, The office of high steward, and the place and execution of the stewardship of my manor or lordship and borough of ——, in the county of ——: *And* the office of chief steward, and the place and execution of the stewardship of my manor or lordship of ——, in the said county of ——: *And also* the office Appointment. Stewardship of a manor and borough: of a manor;

25. STEWARD OF MANORS.

of steward, and the place and execution of the stewardship (to act either alone or in conjunction with the steward or stewards of the other undivided parts or shares of the

of half a manor,

manors next hereinafter mentioned) of my undivided moiety, or half part of the manors or lordships of —— and ——, both

and of third of a manor;

in the said county of ——; *And* of my third undivided part or share of the manor or lordship of ——, in the said county

and the holding of all courts,

of ——: AND the holding and keeping of all customary courts, courts baron, courts leet, views of frankpledge, and all other courts, of what kind or nature soever the same may be, to the said several manors or lordships and borough, and every of them respectively, as far as I am interested

Habendum,

therein, belonging or in anywise appertaining, TO HAVE, hold, execute, and enjoy the aforesaid several offices of steward, and the several places and executions of stewardship, and each and every of them, apart and distinct; and the holding and keeping of all manner of courts usually held or kept within the aforesaid several manors or lordships and borough, and every of them, as far as I am interested there-

with all fees, &c.

in: TOGETHER with all manner of fees, wages, rewards, profits, perquisites, emoluments, and advantages, and parts and shares of fees, wages, rewards, profits, perquisites, emoluments, and advantages whatsoever, to the said several offices, and every of them respectively, belonging or appertaining, or at any time or times heretofore accustomed and used to be paid, rendered to, and received by, the several stewards there respectively for the time being, or any of

during pleasure.

them: *Which* grants by me made, and each and every of them, shall continue in force for the whole or any part thereof respectively, during the will and pleasure of me, the said [*lord*] (*a*), and no longer. IN WITNESS &c.

The gentleman who drew the above appointment said, "I am not prepared to say, what effect the foregoing appointment will have as to those manors, in which the person appointing has only undivided shares. However, I have throughout introduced words of severance; so that the appointment as to those shares will not prejudice that of the manors whereof he has the entirety; and this appointment will at least prevent the owners of the other shares from acting as in case of a vacancy."

(*a*) *Vide ante*, p. 612 (*c*).

26. APPOINTMENT *of a* DEPUTY STEWARD.

26. DEPUTY STEWARD.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I [*steward*], of &c., gentleman, *send greeting*. WHEREAS, (*a*) [*lord*], of &c., esquire, by his deed-poll under his hand and seal, bearing date on or about the —— day of ——, 18—, *did* give and grant unto me the said [*steward*], *The office* of steward of his manors of ——, in the county of ——, and every of them: *And* did thereby constitute and appoint me the said [*steward*] steward of the said manors, and every of them, to keep and hold all courts belonging to the said monors, or any of them, at the usual times the same had been accustomarily holden, and at such other times as I the said [*steward*] should think fit and requisite. *To have*, hold, and enjoy the said office of steward, and to take and receive all and singular the fees and profits thereto belonging, by me the said [*steward*], or my sufficient deputy (*b*),

Recital of steward's appointment.

(*a*) It is not requisite that the original appointment should be recited. *Parker* v. *Kett*, 1 Lord Raym. 660. Com. Dig. *Poiar* (C. 4).

A recital is not requisite.

(*b*) It seems that a steward cannot appoint a general deputy unless he be authorized so to do, either by the terms of his own appointment, Co. Cop. sect. 46, Tr. 107; Gilb. Ten. 284, 320, or by the special custom of the manor. *Lord Dacre's case*, 1 Leon. 288. But where a deputy may be appointed, the extent of his authority is as great as the steward's own authority, and his office consists in performing the self-same duties that the high steward himself is to perform. Co. Cop. sect. 46, Tr. 107. It was formerly held, that a deputy steward could not admit out of court, without a particular custom, Co. Cop. *ubi supra*, or an authority from the lord or head steward for that purpose. Bro. Abr. *Court Barron*, pl. 22; *Tenant per Copie*, pl. 26. However, later authorities established, that a deputy steward may do any act which his principal might have done. *Parker* v. *Kett*, 1 Lord Raym. 659; 1 Salk. 95; 12 Mod. 467, *S. C.* A deputy steward cannot make a general deputy; because it implies an assignment of his whole power, which he cannot assign over. 5 Bac. Ab. 208, *Officers* (L). For a deputy being only one who is authorized himself, he cannot delegate that authority; and if a deputy might make a deputy, such second deputy might also do the same; and so *ad infinitum*, which would be highly inconvenient. Lib. Reg. 446. But every steward, or deputy steward, may authorize another to do any special act for him; as to hold a court, to take sur-

Authority of steward to appoint a deputy.

Authority of deputy.

A deputy steward may admit out of Court.

A deputy steward cannot make a general deputy.

Every steward or deputy stew-

26. DEPUTY STEWARD.

Appointment of deputy steward.

for and during the will and pleasure of the said [*lord*], NOW KNOW YE, that I the said [*steward*], by virtue of the power and authority given me by the said [*lord*], do by these presents constitute and appoint [*deputy*], of &c., gentleman, my deputy steward of the said manors, and every of them, for and during my will and pleasure, to do, perform, and execute the said office in my stead and place, in all things as effectually as if I myself were personally present at the doing thereof: *He* the said [*deputy*], from time to time, whenever he shall be by me required so to do, duly accounting to me for all fines, heriots, and profits of the said courts; and also for all fees, perquisites, rewards, and profits, from the said office arising. IN WITNESS whereof, I the said [*steward*] have hereunto set my hand and seal, &c.

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ard, may appoint another to do any special act.

renders, and make grants by copy and admittances. *Lord Dacre's case*, 1 Leon. 288. Gilb. Ten. 284. *Parker* v. *Kett*.

A deputy may be made by word, by writing, or by deed.

A general or a special deputy steward may be appointed by writing or by parol. Co. Cop. sect. 46, Tr. 107; 1 Leon. 288; 1 Lord Raym. 661. However, the appointment of a deputy for either purpose is most usually made by writing under hand and seal.

27. DEPUTY STEWARD, WITH REDDENDUM.

27. APPOINTMENT *of a* DEPUTY STEWARD *of Manors, with a* REDDENDUM.

Appointment of a deputy steward.

KNOW ALL MEN BY THESE PRESENTS, *That* I, [*steward*], of &c., gentleman, steward of the manors of —— and ——, in the county of ——, *do* by these presents constitute and appoint [*deputy*], of &c., gentleman, my deputy or under-steward of the said manors, to perform and execute the said office in my stead and place, in all things, as effectually as I could do myself if I were personally present, and performed and executed the same. To HAVE, hold, possess, and exercise the said office of deputy-steward of me the said [*steward*], for and during the term of our joint natural lives (*a*) (*or*

Habendum for joint lives of steward and deputy;

(*a*) If the steward be not steward for life, of course he cannot appoint for the joint lives. *Vide ante*, p. 612.

during my pleasure); AND TO TAKE and have, during the said term, for performing and executing the said office, all fees, wages, rewards, and profits, to the same office belonging: *But nevertheless* YIELDING AND PAYING (*b*) therefore unto me the said [*steward*], yearly and every year during the said term, the clear yearly sum of £——, of lawful British money, on the —— day of —— in the year. IN WITNESS &c.

27. DEPUTY STEWARD, WITH REDDENDUM.

and to take all fees, &c.

Reddendum, a yearly sum to steward.

(*b*) Most usually there is also a bond or covenant for this purpose.

28. APPOINTMENT *of a* DEPUTY STEWARD, *for the* SPECIAL *Purpose of admitting an Heir, and taking a Surrender by way of Mortgage; or for taking a Surrender from Husband and Wife to a Purchaser.*

28. SPECIAL DEPUTY STEWARD.

KNOW ALL MEN BY THESE PRESENTS, *That* I, [*steward*], of &c., steward [by patent] of the manor of —— in the county of ——, *have* constituted and appointed, *And* by these presents *do* constitute and appoint [*deputy*], of &c., my deputy steward (*a*), to hold and keep a special court for the said manor, on the —— day of —— next, or on some day before the —— day of —— next, and then and there as my said deputy steward, to admit [*heir*] (eldest son and heir at law of [*ancestor*], deceased, late a copyhold or customary tenant of the said manor), tenant to all and singular the premises which the said [*ancestor*] held of the said manor, and of which he died seised, that is to say; to one messuage, &c., within the manor aforesaid. *To hold* to him the said [*heir*], his heirs and assigns, for ever, at the will

Appointment of a deputy steward,

to admit heir,

(*a*) If it be to take a surrender, either in or out of Court, say, "to take one or more surrender or surrenders, according to the custom of the said manor, of and from [*vendor*], of &c., and [*wife*], his wife, she being first solely and secretly examined touching her consent thereto, after the usual manner of surrenders in the like cases, of *All that* messuage, &c. *To the use* of [*purchaser*], of &c., his heirs and assigns, for ever, according to the custom of the said manor. AND FURTHER to perform and execute" &c. *ut supra.*

TO TAKE SURRENDER FROM HUSBAND AND WIFE.

28. SPECIAL DEPUTY STEWARD.

of the lord, according to the custom of the said manor. AND immediately after his said admission, to accept and take from the said [*heir*] a surrender by the rod of all and singular the said premises, *To the use* and behoof of [*mortgagee*], of &c., his heirs and assigns, for ever; *But with a Condition* that the said surrender shall be void on payment, by the said [*heir*], his heirs, executors, administrators, or assigns, to the said [*mortgagee*], his executors, administrators, or assigns, of the sum of [*mortgage money*], and interest for same, after the rate of five pounds per centum per annum, on the —— day of —— next ensuing. AND FURTHER, to perform and execute the said office in my stead and place, as far as I have here constituted and deputed him the said [*deputy*] my deputy as aforesaid, in all things, as fully and effectually as I could do myself if I were personally present, and performed and executed the same myself: *The* said [*deputy*] duly accounting to me for all heriots, fines, fees, and perquisites, that shall be due and received by him for the purposes aforesaid. IN WITNESS whereof, I have hereunto set my hand and seal, the —— day of —— 18—.

and take mortgage surrender.

General authority.

Deputy to pay fines, &c. to steward.

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29. STEWARD, GAMEKEEPER, RECEIVER, AND MANAGER.

29. GENERAL APPOINTMENT, *by Devisees in Trust, of a Solicitor to the several Offices of* STEWARD, GAMEKEEPER, RECEIVER, *and* MANAGER *of very considerable Estates; with Authority to sell Timber, to contract for granting Leases, and to contract with the Lessors of the Leasehold Part of the Premises for Renewals: and Power to appoint Deputy Stewards, Receivers, Bailiffs, Agents, Surveyors, or Attornies: the Monies the Steward shall receive to be applied in paying himself a Poundage, Law Charges as the Attorney of the Trustees, and for Surveying, &c.: in paying Salaries, &c. to Deputy Stewards, &c.; in paying Annuities charged on the Estates; in paying Expenses of Repairs; and to account for and pay the Residue to the Trustees.*

Parties.

THIS INDENTURE, made &c., BETWEEN [*two trustees*], of &c., the devisees in trust named in the last will and testament, and a codicil annexed thereto, of [*devisor*] lately de-

29. STEWARD, GAMEKEEPER, RECEIVER, AND MANAGER.

ceased, of the manors, messuages, lands, tenements, hereditaments, and premises hereinafter mentioned, of the one part, and [*steward*], of &c., of the other part. (*Recite the will* of the said [*devisor*], deceased, whereby he devised *All* those manors, &c., unto the said [*trustees*], their executors, &c., for two several terms of ninety-nine years, and one hundred years, *Upon* the trusts, &c.) AND WHEREAS the said [*steward*] was employed in the receipt of the rents and profits and management of the estates aforesaid by the said [*devisor*]; and the said [*trustees*] placing an entire confidence in the said [*steward*], they are desirous of appointing him to be steward, gamekeeper, receiver or agent, manager, and superintendent of the several freehold, copyhold, and leasehold estates so as aforesaid comprised in the said terms of ninety-nine and one hundred years, and devised by the above-recited will to the said [*trustees*], upon the trusts aforesaid, in the manner and for the several ends, intents, and purposes hereinafter particularly declared. NOW THIS INDENTURE WITNESSETH, that for carrying the said desire of them the said [*trustees*] into execution, *They* the said [*trustees*] by these presents *do* and each of them *doth* make, ordain, constitute, and appoint the said [*steward*], to be the chief and sole steward of them and each of them, of all those the said several manors or lordships of &c.; AND ALSO to hold and keep all and singular the [courts leet, courts baron, courts of view of frankpledge, customary, and other] courts within the said manors, or any of them: AND to demand, sue for, and recover, have, receive, and take to and for the proper use and benefit of him the said [*steward*], all manner of fees, perquisites, profits, wages, rewards, and advantages whatsoever, to the office of steward of the said manors belonging or appertaining, and which have heretofore been accustomed to be had and received by the steward or stewards thereof respectively, to and for their respective use and benefit, for or by reason of the office of steward. AND FURTHER, that the said [*trustees*] by these presents *do*, and each of them *doth*, empower, authorize, nominate, and appoint, the said [*steward*] henceforth to be the gamekeeper for them and each of them of the several manors or lordships hereinbefore named: *And* to preserve or kill (*a*) the game within the limits of the said manors, or any of them, for the use of the said [*trustees*],

Recital of devise of estates to trustees.

Recital of steward having been employed by devisor;

and desire of trustees to appoint him steward, &c.

First testatum.

Appointment of steward,

to hold all manner of courts;

and to demand fee of office.

Appointment of gamekeeper,

to kill game,

(*a*) *Vide ante*, p. 550.

29. STEWARD, GAMEKEEPER, RECEIVER, AND MANAGER.

and the survivor of them. AND ALSO to seize and take, for the use of the said [*trustees*], and the survivor of them, all such dogs, nets, and other engines and instruments for the killing or taking of game as shall be used within the said limits by any person not authorized to kill game for want of a game certificate; *And generally* to do, execute, and perform all such matters and things, for the preservation of the game within the said manors, as they the said [*trustees*], or either of them, might or could do if personally present. AND MOREOVER, they the said [*trustees*] by these presents *do*, and each of them *doth*, make, ordain, constitute, and appoint the said [*steward*], the receiver, agent, and attorney of them and each of them for and in the names and name of them and each of them, and the survivor of them, to ask, demand, levy, sue for, recover, and receive, by all lawful ways and means whatsoever, of and from all and every the present and future tenant and tenants of *All* and singular the freehold, copyhold, and leasehold manors, messuages, tenements, lands, and hereditaments comprised in the said several terms of ninety-nine years and one hundred years, and devised, or intended to be devised, to them the said [*trustees*] by the said will of the said [*testator*], deceased, upon the trusts aforesaid; and also of and from all other persons liable to pay the same, ALL and singular the rents, issues, and profits, fines upon copyholds, grants, or demises, and renewals of leases, heriots, and other casual profits, that are now in arrear and unpaid, in the hands of any of the under-stewards or bailiffs, receivers or agents, of the same manors, messuages, tenements, lands, and hereditaments, or any part thereof, and which shall hereafter grow due and be in arrear for or in respect of the same manors, messuages, tenements, lands, and hereditaments, or any of them, or any part thereof: AND upon non-payment of the same, or any part thereof, to enter and distrain upon the hereditaments and premises liable thereto; and the distress and distresses then and there found, to take, lead, drive away, and impound, and in pound to detain and keep, or otherwise to sell and dispose thereof according to due course of law. AND ALSO to commence and prosecute any action or actions, suit or suits, in any court of law or equity, for the recovery of the said rents, issues, and profits, and for recovering, receiving, obtaining, and getting possession of all and singular and every or any of the said manors, messuages, tenements, lands, and here-

and seize engines;

and to do all such things for preserving the game as the persons appointing could.

Appointment of receiver of

rents, fines, heriots, &c.

On non-payment, to distrain:

to bring actions, &c.

ditaments, or any fines, heriots, rents, sum or sums of money, duties, or services, in respect thereof: *And* the same action or actions, suit or suits, to prosecute and follow, or to discontinue, or otherwise to act therein as he the said [*steward*] shall think proper to be advised: AND upon receipt of the same rents, arrears of rents, issues, and profits, or any part thereof, for them the said [*trustees*], and each of them, and the survivor of them, to give effectual receipts, acquittances, and discharges for the same. AND ALSO, from time to time, as the said [*steward*] shall think proper and necessary, to sell and enter into, and sign, seal, and execute, any contract or contracts for sale of any part or parts of the timberwood and underwood, growing and being upon any of the manors, lands, and premises comprised in the said terms of ninety-nine years and one hundred years, or either of them, and which they the said [*trustees*], or either of them, are or is, under or by virtue of the said will, authorized and empowered to fell and cut down. AND ALSO to sign and execute effectual receipts and discharges for the sum and sums of money which shall and may arise and become payable for and in respect of the sale of any such timber. AND ALSO to empower the respective purchasers of all or any such timberwood and underwood, for themselves, their agents, and workmen, to enter on the manors, lands, and premises whereon the same shall be growing, and with horses, carts, and carriages, or without, to carry away the same; *And* to make sawpits and charcoal pits and hearths, and to do all such other acts as shall be necessary for converting, ordering, and managing the said timber and other trees on such convenient and proper places on the manors, lands, and premises whereon the same shall be growing or standing, as shall be from time to time assigned and set out by the said [*steward*] for that purpose. AND ALSO from time to time, in the names of them the said [*trustees*], and each of them, and the survivor of them, to enter into and upon, and inspect and survey all and every the said freehold, copyhold, and leasehold manors or lordships and hereditaments, at his free will and pleasure; and to view, search, and see the state and condition and defaults and wants of repair of the same, and of the buildings and the hedges and ditches thereof, and of all and every part and parts of the same hereditaments; *And* to repair and give orders, and enter into any contract

to give receipts for rents, &c.

to sell timber.

To give receipts for purchase-money of timber.

To empower purchasers to carry away timber,

and to make sawpits, &c.

To inspect the estates, and order repairs.

29. STEWARD, GAMEKEEPER, RECEIVER, AND MANAGER.

for, and employ any person in repairing the same. AND ALSO, for and in the names or name of them the said [*trustees*], and each of them, and of the survivor of them, and as their and his act and deed, from time to time, to enter into, sign and seal, and execute any contract or contracts for any lease or leases of all or any of the aforesaid devised lands and hereditaments, for such fines, and under such rents, for such terms, and upon such conditions, as in such contracts respectively shall be mentioned, and as shall be conformable to the powers of leasing hereinbefore recited, or any other power vested in them the said [*trustees*], or either of them, in that behalf. AND from time to time to contract with the several grantors or landlords for the time being, of all and every or any of the leasehold messuages, farms, lands, tenements, and hereditaments, by the said will bequeathed to the said [*trustees*] as aforesaid, for the renewal of any of the same leases, and for the quantum of the fines and fees to be paid in respect thereof, as to him the said [*steward*] shall seem meet. AND GENERALLY, to inspect, manage, oversee, and superintend all and singular the said freehold, copyhold, and leasehold manors and hereditaments; *And also* to do any act, matter, or thing for the improving, bettering, and supporting the same and the income thereof, and the interest of the several persons entitled thereto in possession and remainder in every particular, in the most beneficial manner and to the best advantage, and as the said [*steward*] shall, according to his uncontrolled discretion and judgment, think proper. AND they the said [*trustees*] *do*, and each of them *doth*, hereby give and grant full power and authority unto the said [*receiver*], from time to time, as to him shall seem meet, to make, ordain, constitute, and appoint, any person or persons to be his deputy steward or stewards of all or any of the manors and hereditaments aforesaid; and also to be his deputy-receiver or receivers, bailiff or bailiffs, agent or agents, surveyor or surveyors, attorney or attornies, for recovering or receiving the rents, issues, and profits aforesaid, or any of them, or any part thereof, and for making, executing, and completing any such contract or contracts for sale of timber, and granting leases as aforesaid, and for surveying and repairing, and managing and improving the freehold, copyhold, and leasehold hereditaments aforesaid; and also to act in all and singular the premises in the same manner as he the said [*steward*] is

To contract for granting leases.

To contract for renewals of the leasehold parts.

Generally to inspect, improve, &c. the estates.

Power to appoint deputy stewards, receivers, bailiffs, agents, surveyors, or attornies;

29. STEWARD, GAMEKEEPER, RECEIVER, AND MANAGER.

hereby empowered to act therein: *And also*, from time to time, to change and remove any such deputy stewards, bailiffs, receivers, agents, surveyors, or attornies, and to appoint any others in his or their stead or place, when and so often as to him the said [*steward*] shall seem meet. AND GENERALLY, for him the said [*steward*] to do, execute, and perform any other act, deed, matter, or thing whatsoever, relating to all or any of the manors and hereditaments aforesaid, as fully and effectually, to all intents and purposes whatsoever, as the said [*trustees*], or either of them, might or could do if personally present: *And* they the said [*trustees*] do, and each of them doth, hereby ratify and confirm, and promise and agree to ratify and confirm, all and whatsoever the said [*steward* shall lawfully do, or cause to be done in or about the premises. AND THIS INDENTURE FURTHER WITNESSETH, that they the said [*trustees*] by these presents *do*, and each of them *doth*, authorize, direct, and appoint the said [*steward*] to apply and dispose of, and account for all and singular the monies which shall come to his hands by virtue of these presents, and of the powers and authorities hereby vested in him as aforesaid, (*save and except the* fees and perquisites of office, as steward of the manors aforesaid); in the first place, in payment from time to time to himself, the said [*steward*], of sixpence in the pound, upon and out of all monies which shall come to his hands, or be actually received by him, for or on account of the rents, arrears of rent, sale of timber, and other the sums which he is empowered and authorized to collect and receive, by virtue of this present indenture, (which sum of sixpence in the pound is to be the consideration and recompense for receiving the rents and monies aforesaid, and keeping, settling, and arranging the accounts relating thereto): *And* in the next place, in payment of bills for law charges, fees, and disbursements, (not including travelling expenses or journeys), which shall become due to him the said [*steward*], as the solicitor, agent, or attorney of the said [*trustees*] respectively, in prosecuting or defending any action or actions, suit or suits, relating to the estates, rents, and monies aforesaid, and the surveying, mapping, and planning, managing, improving, and superintending the same estates, and the execution of the several powers and authorities vested in him the said [*steward*], exclusive of receiving such rents and monies, and keeping the accounts relating thereto as afore-

and to remove them, and appoint others.

General power to steward.

Ratification of his acts.

Second testatum.

Authority to steward to apply the monies,

in paying himself a poundage;

in paying himself law charges, as attorney of trustees,

and for surveying, &c.

29. STEWARD, GAMEKEEPER, RECEIVER, AND MANAGER.

said: *And* in the next place, in payment of salaries, wages, and fees, which shall from time to time become due and owing to the several under and deputy [stewards], receivers, bailiffs, surveyors, agents, and other persons, which he the said [*steward*] shall think proper to employ for the purposes aforesaid: *And* in the next place, in the paying and discharging all and singular the annuities or yearly rentcharges, which now are or shall continue charged upon all or any of the manors and hereditaments aforesaid, as the same shall, from time to time, become due and payable; *And* also in payment, from time to time, of the expenses to be incurred on account of the repairs which shall be made upon any of the hereditaments aforesaid, which the respective tenants thereof shall not be liable to pay: *And* in the next place, in payment of all fines, fees, and charges, which shall become due to the landlords for the time being of any of the said leasehold premises, for obtaining renewals thereof: *And* from and after the payment of the said several annuities and other sums of money, *In trust* from time to time, to answer, account for, and pay the balance remaining in the hands of the said [*steward*], unto the said [*trustees*], their executors, administrators, and assigns. IN WITNESS &c.

in paying salaries, &c. to deputy stewards, &c.

in paying annuities charged on the estates;

in paying expenses of repairs;

to account for and pay the residue to trustees.

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30. PROTECTOR.

[30. APPOINTMENT *of a* PROTECTOR *of a* SETTLEMENT *under a Will, in lieu of* ONE *of three* PROTECTORS *appointed by the Will, who* RELINQUISHES *his Office by the same Deed: Variations adapted to the Case of a Protector's relinquishing his Office by a separate Deed, or of a Vacancy happening by Death.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, We [*appointors*], of &c., *send greeting.* WHEREAS [*testator*], by his last will, bearing date &c., gave and devised all &c. (*recite all the limitations of the estate*), AND by his said will the said [*testator*] nominated and appointed [*protectors*] to be protectors of the several estates tail created by his said will during the continuance of the estate for life, or respective estates for life for the time being, prior or antecedent to such estate tail or estates tail respectively, with such discre-

Recital of will;

of appointment of protector;

30. PROTECTOR.

of power to supply vacancies.

tionary powers, authorities, and privileges, as the law hath annexed to the office of protector; AND the said testator further declared, that in case any or one of them the said [*protectors*], or any protectors or protector to be appointed as thereinafter mentioned, should die, or be desirous of relinquishing the office of protector, then and in every such case it should be lawful for the surviving or continuing protector or protectors for the time being, or if there should be no surviving or continuing protector, then for the executors or administrators of the last deceased protector, or if there should be no such person, then for the protector or protectors so relinquishing the office as aforesaid, by any deed or deeds, to be duly inrolled in the High Court of Chancery, to nominate or appoint one or more person or persons not being tenant for life in possession for the time being of the hereditaments thereinbefore devised, to be a protector or protectors in the room of the person or persons who should have so died or have relinquished the office of protector as aforesaid, to the intent that the full number of three persons should and might from time to time fill the said office; *And* the said testator declared that the person or persons so to be nominated and appointed as aforesaid, should have and might exercise, either in conjunction with the surviving or continuing protector or protectors, or solely, as the case might be, the same discretionary powers, authorities, and privileges in all respects, as he or they would have had and might have exercised if he or they had been appointed a protector or protectors of the said estate tail or respective estates tail by his said will; and the said testator did especially request and entreat (*a*), that the protectors for the time being would exercise the controlling power vested in them by the law in declining and refusing, during the whole continuance of the protectorship hereby created, to aid any tenant in tail under his said will in acquiring the fee-simple in the hereditaments hereby limited to him or her, unless for the purpose of resettling and assuring the said hereditaments in such manner as would tend to fix and perpetuate the same in the said testator's descendants: AND WHEREAS the said testator departed this life in the month of ——,

Recital of testator's death.

(*a*) [Such an injunction creates no legal obligation on the protectors, whose discretion is expressly declared by the statute to be absolute and uncontrollable.]

30. PROTECTOR.

without having revoked or altered his said will: AND WHEREAS (*b*) the said [*retiring protector*] is desirous of relinquishing the office of protector so imposed upon him by the said will of the said [*testator*] deceased: AND WHEREAS the said [*continuing protectors*] are desirous of appointing [*new protector*], to be a protector in the room of the said [*retiring protector*]. NOW KNOW ALL MEN BY THESE PRESENTS that I [*retiring protector*] *have* relinquished, and by this present deed, under my hand and seal, *do* absolutely relinquish the office of protector of the said estates tail, so imposed upon me by the will of the said [*testator*] deceased. AND KNOW YE FURTHER, that We [*continuing protectors*] *have* appointed, and by this present deed under our respective hands and seals *do* appoint (*c*) [*new protector*], to be a protector of the said estate tail or respective estates tail under the said will of the said [*testator*] deceased, in the

Desire to retire from protectorship.

Desire to appoint new protector.

Retiring protector relinquishes his office.

Appointment of new protector.

(*b*) If the protector has relinquished by a separate deed, say,

RELINQUISHMENT BY SEPARATE DEED.

"AND WHEREAS the said [*retiring protector*], by deed-poll, under his hand and seal, duly inrolled in the High Court of Chancery, did absolutely relinquish and retire from the said office of protector so imposed upon him by the said will of the said [*testator*] deceased: AND WHEREAS the said [*continuing protectors*] are desirous" &c. NOW KNOW YE (*following up the recital immediately by the appointment of the new protector as in the text*).

If the former protector has died, say,

FORMER PROTECTOR DECEASED.

"AND WHEREAS the said [*deceased protector*] departed this life in the month of —— last, and is buried in ——: AND WHEREAS the said [*continuing protectors*] are desirous" &c.

(*c*) [See the statute 3 & 4 Will. 4, c. 74, s. 32, which restrains the number of protectors at one time to three. The persons appointed must not be aliens, and they must be *in esse* when they are appointed. The power of appointing new protectors can only be exercised in case a vacancy occur by death or relinquishment. In case of the *incapacity* of any protector, the Lord Chancellor or Lord Keeper is intrusted with his authority (sect. 33).]

[J. If the owner of the prior estate for life or estate determinable with life, is made one of the protectors, he should be prohibited from acting as protector in case of the office becoming, by the death or retirement of his coadjutors, vested solely in him, or otherwise it would seem he might do. The effect of such a declaration is to constitute the Court of Chancery protector until the vacancy in the protectorship is supplied under the power.J.]

room of the said [*retiring protector*], and jointly with us; with all such discretionary powers, authorities, and privileges, in all respects, as if he the said [*new protector*], had been appointed a protector of the said estate tail or estates tail in and by the said will of the [*testator*] deceased. IN WITNESS &c. (*a*) 30. PROTECTOR.

As wills under powers partake generally of the qualities of proper wills and, if relating to personal estate, and although made by married women, must be proved in the Ecclesiastical Court, *Ross* v. *Ewer*, 3 Atk. 160, such testamentary appointments are classed under WILLS. TESTAMENTARY APPOINTMENTS.

For APPOINTMENTS OF NEW TRUSTEES, see Vol. 6, NOMINATION OF NEW TRUSTEES. NEW TRUSTEES.

For APPOINTMENT AND RELEASE, &c., see titles, ANNUITY, MORTGAGE, PURCHASE, and SETTLEMENT. APPOINTMENT AND RELEASE.

And see further as to APPOINTMENT, INDEX TO THE PRECEDENTS, title APPOINTMENT. APPOINTMENT GENERALLY.

(*a*) [This appointment, and the relinquishment of the office of protector by the retiring protector, if it is made by a separate deed, must be inrolled in Chancery within six months after the execution. Stat. 3 & 4 Will. 4, c. 74, s. 32.]

APPORTIONMENT.

PRECEDENTS.

1. OF RENT BY TWO PURCHASERS OF LEASEHOLD, BY CROSS COVENANTS AND POWERS OF DISTRESS.

1. APPORTIONMENT *of* RENT *between two Purchasers of distinct Premises held under one Lease; by means of* CROSS COVENANTS *by each with the other, to pay his apportioned Ground Rent; to pay increased Rent for carrying on excepted Trades, if occasioned by him; to perform the Covenants of the Lease so far as they relate to the Premises assigned to him; for Acquittal and Indemnity: with* CROSS POWERS OF DISTRESS *for Recovery of any Sums which one may pay in respect of the Rents and Covenants agreed to be paid by the other* (*a*).

Parties.

THIS INDENTURE, made &c., BETWEEN [*purchaser*], of &c., of the one part; and [*other purchaser*], of &c., of the other part. WHEREAS by indenture of lease, bearing date on or about the —— day of ——, and made between [*lessor*] of the one part, and [*lessee*] of the other part: (*recital of a lease of* a piece of ground, and two messuages thereon, to [*lessee*], for eighty-eight years and three quarters of a year wanting ten days; *Under* the yearly rent of 12*l.* 16*s.*, and an additional rent of £50, in case certain trades are

Recital of lease for years, of a piece of ground and two houses thereon.

Apportionment of rent, sometimes made in the assignment of leaseholds to different purchasers.

(*a*) See another form *infra*, Vol. 4, p. 202. Sometimes the apportionment is made (in a manner similar to the above) in the assignment from the vendor, each of the parties having a copy of the deed, as in the form of ASSIGNMENT OF LEASEHOLDS, under title PURCHASE. See there also a form of an ASSIGNMENT, where the vendor retains part of the premises. For the form of an AGREEMENT for purchase of part of a leasehold estate, *vide ante*, Vol. 1, p. 550.

[As to the apportionment of rent, *vide infra*, Vol. 4, p. 334. See also *ante*, pp. 60, 365.]

carried on therein). And whereas the said [*lessee*] did, on or about the —— day of ——, cause the messuages, tenements, and premises comprised in the said indenture of lease to be put up to sale in two distinct lots, by ——, auctioneer, at ——, pursuant to printed particulars and conditions, published previously to such sale; at which sale the said [*purchaser*], and [*other purchaser*] attended, and being the highest bidders for, were declared the purchasers of, the messuages or tenements and premises comprised in the said indenture of lease, that is to say; the said [*purchaser*], of one of the said messuages, being No. —— in ——, at or for the price or sum of £——; and the said [*other purchaser*], of the other of the said messuages, with the appurtenances, being No. —— in —— aforesaid, at or for the price or sum of £——. And whereas, by indenture of assignment, bearing even date with, but executed previously to, the execution of these presents, and made between the said [*lessee*], of the first part, the said [*purchaser*], of the second part, and the said [*other purchaser*] of the third part; in consideration of the sum of £—— to the said [*lessee*], paid by the said [*purchaser*], he the said [*lessee*] *hath* granted, bargained, sold, assigned, transferred, and set over unto the said [*purchaser*], his executors, administrators, and assigns, *All that* messuage or tenement, &c. *To hold* the same unto the said [*purchaser*], his executors, administrators, and assigns, from the —— day of —— now last past, for and during all the rest, residue, and remainder now to come and unexpired of the said term of eighty-eight years and three quarters of a year wanting ten days, by the said indenture of lease granted; *Subject nevertheless* to the payment of the yearly rent or sum of 6*l.* 8*s.*, being one moiety or half part of the said yearly rent or sum of 12*l.* 16*s.*, by the said indenture of lease reserved and made payable; *And subject also* to the performance of the covenants, conditions, and agreements, in the same indenture of lease inserted and contained, so far only as the same relate to and concern the messuage, or tenement and premises thereby assigned. And whereas (*recite assignment to other purchaser of the other house in like manner.*) And whereas, by the conditions of the said sale, it was stipulated, that each of them the said [*purchaser*], and [*other purchaser*], the purchasers of the said messuages, or tenements and premises, should pay the yearly rent or sum of 6*l.* 8*s.* in respect of the pre-

1. OF RENT BY TWO PURCHASERS OF LEASEHOLD, BY CROSS COVENANTS AND POWERS OF DISTRESS.

Recital of sale by auction of one house to one purchaser, and the other to another;

assignment of one of the houses to one purchaser;

for the residue of the term;

subject to the apportioned rent;

and subject to the covenants, so far as relates to the part assigned;

similar assignment to the other purchaser;

that the conditions of sale stipulated that the rent should be apportioned;

1. OF RENT BY TWO PURCHASERS OF LEASEHOLD, BY CROSS COVENANTS AND POWERS OF DISTRESS.

mises by him purchased, being one moiety of the said yearly rent of 12*l.* 16*s.*, reserved by the said indenture of lease. AND WHEREAS for the more effectually apportioning the said yearly rent or sum of 12*l.* 16*s.* between them the said [*purchaser*] and [*other purchaser*], and their respective executors, administrators, and assigns; *And* for indemnifying each of them, and his executors, administrators, and assigns, and the premises by him purchased, from the rents, covenants, and agreements reserved and contained in the said indenture of lease, which ought to be paid, kept, done, and performed in respect of the premises purchased by the other of them, it hath been mutually agreed between the said [*purchasers*] that they should respectively enter into such covenants and agreements as are hereinafter contained.

that for more effectually apportioning the rent, and indemnifying each other, both purchasers had agreed to enter into the covenants hereinafter contained.

First testatum. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the covenants hereinafter contained, on the part of the said [*other purchaser*], his heirs, executors, and administrators, he the said [*purchaser*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*other purchaser*], his executors, administrators, and assigns, that he the said [*purchaser*], his executors, administrators, and assigns, will and shall, from time to time, and at all times hereafter, during the residue yet to come and unexpired of the said term of eighty-eight years and three quarters of a year wanting ten days, by the said indenture of lease granted as aforesaid, well and truly pay or cause to be paid, unto the said [*lessor*], his executors, administrators, or assigns, or such other person or persons as shall from time to time be entitled to receive the said ground rent or yearly sum of 12*l.* 16*s.*, reserved by the said indenture of lease, the clear yearly rent, or sum of 6*l.* 8*s.*, being one moiety or half part of the said ground rent, when and as the same shall become due and payable, according to the true intent and meaning of the same indenture of lease: AND will and shall well and truly pay or cause to be paid, the said increased rent of £50, in case the same shall become payable, and so far as the same is or shall be occasioned by the said [*purchaser*], his executors, administrators, under-tenants, or assigns: And will and shall, during the continuance of the said term, perform, fulfil, and keep all and singular the covenants, stipulations, and agreements, inserted and contained in the said indenture of lease on the part of the said [*lessee*], his executors,

Covenant by one purchaser with the other;

to pay his apportioned ground rent;

to pay increased rent, if occasioned by him;

to perform covenants of the lease, so far as they relate to the premises assigned to him;

1. OF RENT BY TWO PURCHASERS OF LEASEHOLD, BY CROSS COVENANTS AND POWERS OF DISTRESS.

administrators, and assigns, to be kept, done, and performed, so far as such covenants, stipulations, and agreements relate to, or concern, or ought to be kept, done, and performed, in respect, or on account of the messuage, or tenement and premises, so purchased by him the said [*purchaser*], and comprised in the firstly hereinbefore recited indenture of assignment, bearing even date herewith: AND of and from a moiety, or half part, of the said yearly rent or sum of 12*l.* 16*s.*, and of and from the said increased rent, so far as the same shall be occasioned by the said [*purchaser*], his executors, administrators, under-tenants, or assigns; *And* of and from the said covenants, stipulations, and agreements, so far as they respectively relate to, or concern, or ought to be kept and observed, in respect, or on account of the messuage or tenement and premises so purchased by the said [*purchaser*] as aforesaid; *And* of and from all and every neglect, breach, or default which shall or may at any time or times hereafter happen in the payment or performance thereof respectively, will and shall save, defend, keep harmless and indemnified, the said [*other purchaser*], his executors, administrators, and assigns, and his and their lands and tenements, goods and chattels: AND MOREOVER, that in case the said [*other purchaser*], his executors, administrators, or assigns, shall at any time or times hereafter, bear, sustain, be put unto, or pay any sum or sums of money, costs, charges, or expenses, for or upon account, or in respect of the said yearly rent or sum of 6*l.* 8*s.*, or of the increased rent, covenants, and agreements, hereinbefore covenanted and agreed to be paid, kept, done, and performed by the said [*purchaser*], his executors, administrators, and assigns, as aforesaid, or any of them; *Then* and in every such case, and so often as it shall so happen, it shall and may be lawful to and for the said [*other purchaser*], his executors, administrators, and assigns, into and upon the messuage, tenement, and premises so purchased by the said [*purchaser*], and comprised in the firstly above recited indenture of assignment, bearing even date herewith, to enter and distrain for all and every such sums and sum of money, costs, charges, and expenses, which he the said [*other purchaser*], his executors, administrators, or assigns, shall so pay, bear, sustain, expend, be at, or be put unto: *And* the distress and distresses then and there found, to take, lead, drive, carry away, and impound, and in pound

for acquittal and indemnity from a moiety of ground rent, and the whole of increased rent, if occasioned by him;

and from covenants, so far as they relate to the premises assigned to him.

Power of distress for recovery of any sums which the other purchaser shall pay, in respect of the rents and covenants agreed to be paid by covenantor.

1. OF RENT BY TWO PURCHASERS OF LEASEHOLD, BY CROSS COVENANTS AND POWERS OF DISTRESS.

to detain and keep, until the same sum and sums of money, costs, charges, and expenses, and all costs, charges, and expenses whatsoever, sustained, or occasioned by, or attending the making, taking, and keeping any such distress or distresses, shall be fully paid and satisfied; *And* in default of payment thereof, in due time after such distress or distresses shall be made and taken as aforesaid, to appraise, sell, and dispose of such distress or distresses, or any part thereof; or otherwise to act in regard thereto, according to the due course of law, in like manner as in case of distress for non-payment of rent, reserved upon common leases: *To the intent*, that thereby and therewith, the said [*other purchaser*], his executors, administrators, and assigns, shall and may be fully paid and satisfied all and every such sums and sum of money, costs, charges, and expenses as aforesaid.

Second testatum.

Similar covenants by the other purchaser with the previous covenantor.

AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance of the said agreement, and for and in consideration of the covenants hereinbefore contained on the part of the said [*purchaser*], his heirs, executors, and administrators, he the said [*other purchaser*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*purchaser*], his executors, administrators, and assigns, That he the said [*other purchaser*], his executors, administrators, and assigns, will and shall, &c. (*the same covenants, mutatis mutandis, as before*) (*a*). IN WITNESS &c.

Covenant for production of lease, &c.

(*a*) The purchaser of the largest lot being entitled to the custody of the lease and assignments, if any, there should be added a covenant for the production and to permit copies to be taken. See the form, *ante*, p. 269, *mutatis mutandis*, and in ASSIGNMENT of LEASEHOLDS, under title PURCHASE.

ARBITRATION.

PRELIMINARY REMARKS.

SUBMISSIONS TO ARBITRATION.

As to the utility of references to arbitrators.

REFERENCES to arbitration are sometimes the means of saving expense, and are peculiarly adapted to the settlement of matters of account and mercantile transactions, which are difficult and almost impossible to be adjusted on a trial at law. 3 Bla. Com. 17. Courts of justice, and many of our law writers, have been full of praises on these domestic tribunals; but, unfortunately, persons who refer disputes to arbitration, are not generally so well satisfied with the decision of the arbitrators as they would have been with the decision of a Court of justice. For, as arbitrators are frequently suspected of entering on the investigation with minds prejudiced in favour of an opposite party (and there are not wanting instances of gross misconduct in arbitrators), and their decisions are unattended with the formal solemnity of judicial proceedings, the award is too often equally dissatisfactory to all the parties, which leads to endless litigation and expense. The office of an arbitrator between neighbours or friends is not a desirable office, unless the parties interested are of well constituted minds. And considerable doubts are entertained whether the *eulogia* upon the domestic *forum* of arbitrators are well founded. 6 Ves. 818. This is certain, it is generally preferable to make the reference to a stranger, than to a friend or neighbour.

Enforcement of submission.

Equity will not enforce a specific performance of a covenant to nominate arbitrators.

A Court of equity will not decree a specific performance of a covenant or agreement in articles of copartnership, &c., to nominate arbitrators to settle disputes; nor, unless there be a reference depending, or made and determined, will such a covenant or agreement oust the Courts of law or equity of their jurisdiction; 2 Wooddeson's Lect. 135: *Wilks* v. *Davis*, 3 Meriv. 507; and therefore it cannot be pleaded in bar to an action at law; *Kill* v. *Hollis-*

SUBMISSIONS TO ARBITRATION.

Enforcement of submission.

ter, 1 Wils. 129: *Thompson* v. *Charnock*, 8 T. R. 140; nor is such a plea any bar to a bill for discovery and relief in equity. *Street* v. *Rigby*, 6 Ves. 818: *Mitchell* v. *Harris*, 2 Ves. jun. 132; 4 Bro. C. C. 311. See also *Agar* v. *Macklew*, 2 Sim. & St. 423. At law, it seems, no action can be maintained for refusing to perform such an agreement; *Tattersall* v. *Groote*, 2 Bos. & P. 135; at least, only nominal damages can be recovered. 6 Ves. 818, 819. The prudential way of drawing such articles is, to have an agreement for liquidated damages, in order to enforce a specific performance (*a*). But, it seems, if the party enforces his legal remedy by such a stipulated security, he would not also have a remedy in equity.

Proper method is to fix the stipulated damages.

Effect of general arbitration clauses.

[J. Such clauses, however, are not without use: they have a pacific tendency, in consequence of the impression which prevails as to their obligatory nature; and Courts of equity, though they cannot refuse to entertain a suit on account of the existence of an agreement to refer to arbitration, are disposed to encourage a resort to this conventional tribunal for the adjustment of matters which cannot be adequately investigated or dealt with by the Court, and to view with disfavour the conduct of a party who insists upon seeking its aid without having first attempted to obtain redress by this means.J.]

[J. Thus, in *Waters* v. *Taylor*, 15 Ves. 10, Lord *Eldon* refused to appoint a manager and receiver of the Italian Opera House (an establishment which has made a conspicuous figure in the annals of partnership litigation), upon an interlocutory motion, on the ground that there were special provisions for referring to arbitration these particular subjects of dispute, and they being such as to render it almost impossible that justice could be administered by the Court: his Lordship observed—"With reference to the case of *Halfhide* v. *Fenning*, 2 B. C. C. 336, I admit, that, upon the best authority, the opinion expressed by Lord *Kenyon* in that case is wrong, as there are against it the concurrent opinions of Lord *Hardwicke*, Lord *Thurlow*, Lord *Rosslyn*, and of Lord *Kenyon* himself. As a general proposition, therefore, it is true that an agreement to refer disputes to arbitration will not bind the parties even to submit to arbitration before they come into Court. I would not therefore say, that the consequence of this provision in the instrument is that a suit cannot be instituted, without adding this qualification, that the Court, if bound to administer relief, is fully justified in pausing before it takes, upon an interlocutory motion, a step,

(*a*) [As to such agreements, see tit. AWARD.]

SUBMISSIONS TO ARBITRATION.
Enforcement of submission.

that is, in truth, the greatest part of the relief; and if the Court will not come to such a decision in the cases to which I have alluded, where no individual has any particular right, founded in contract, which is to be divested, it is much more wholesome, where the parties have contracted for this mode of settling their differences, and the point of dispute is one which is expressly provided for, to let them try whether they cannot so settle it, than that this Court should interpose upon this sort of summary application."[J.] [See *Cheslyn* v. *Dalby*, 2 You. & C. 170.]

Whether an agreement to refer future disputes to certain arbitrators named is binding.

[J. Although it is clear that the covenant ordinarily introduced into partnership and other deeds, to refer disputes to the arbitration of persons to be nominated for that purpose by the parties when the disputes arise, has no operation in excluding the jurisdiction of the Courts, and cannot be pleaded in bar to any proceedings relating to the matters so agreed to be referred, yet it does not follow that an agreement to refer disputes to arise in future to arbitrators *actually named*, is equally inoperative. Such an agreement differs only from the common submission to arbitration of any particular dispute, (the validity of which is in every day's experience), in the fact, that the differences to which it relates are not existing at the time, but are future; and this, it is conceived, does not vary the principle; for the inefficiency of the general partnership agreement to refer disputes seems to arise, not from the circumstance that the disputes are not actually pending at the time of the agreement, but that the arbitrators are not named; or, in other words, that the tribunal to which the parties intend to submit their differences is not constituted. If this be the case, it would seem to be an improvement in the mode of framing such clauses, to name certain arbitrators in the first instance, providing, that, in the event of their decease, or becoming unwilling or unable to undertake the reference, other persons shall be nominated in the ordinary manner. The only objection which readily presents itself to this plan is, that such a change of circumstances may have occurred in regard to the nominated arbitrators, as to render them less eligible for the office than at the time of their appointment; but this objection has, of course, less force where the differences to be provided against will, in all probability, arise within the compass of a short period, than where they may happen during a more extended period.J.]

[At law, however, the naming of the arbitrators appears to make no difference. In a case in the K. B., 4 Will. 4, on a motion for a new trial, the Court is said to have held, that a clause in a policy

SUBMISSIONS TO ARBITRATION.

Enforcement of submission.

of insurance, providing that all disputes should be referred to a committee of persons specially named, did not prevent the assured from bringing an action for a loss, without proceeding under that clause, notwithstanding the referees, at the commencement of the action, were proceeding upon the reference, *it not appearing that the plaintiff had assented to the reference after the loss. Harrison* v. *Douglas*, Watson Arbitr. 7, n. *Et vide infra*, p. 639.]

[There is a similar difficulty in carrying into effect agreements to sell at a valuation, for if either party refuse to name a valuer, equity cannot enforce performance; and where, by naming valuers beforehand, or by proper stipulations in the contract, that obstacle is avoided, there may still exist difficulties in the way of proving that the arbitrator has in every respect observed his authority. See *Emery* v. *Wase*, 5 Ves. 846: *Cooth* v. *Jackson*, 6 Ves. 17: *Milnes* v. *Gery*, 14 Ves. 408: *Blundell* v. *Brettargh*, 17 Ves. 241: *Wilks* v. *Davis*, 3 Mer. 507: *Chichester* v. *M'Intyre*, 4 Bligh, N. S., 139: *Hopecraft* v. *Hickman*, 2 Sim. & St. 130.]

SUBMISSION BY RULE OF COURT.

References by Rule of Court.]—[When the matter in dispute was the subject of an action pending in any of the superior (*a*) Courts at Westminster, the practice was very early introduced of allowing the cause to be called on at Nisi Prius, and then taking a verdict for the full amount of damages laid in the declaration, subject to the award of an arbitrator agreed upon by the parties; the reference being made a rule of court. These references can only be made upon consent of both parties. The reference is taken after verdict, where the defendant has been held to bail, because a reference before verdict is a discharge of the bail. 2 Saund. 72, *b;* (as to replevin, see *Hallett* v. *Montstephen*, 2 Dowl. & Ry. 343: *Moore* v. *Bowmaker*, 7 Taunt. 97, 2 Marsh. 81, 392: *Archer* v. *Hale*, 1 Moo. & Pay. 285: *Aldridge* v. *Harper*, 3 Moo. & Sc. 518). In other cases, if we except the danger of an abatement of the suit, (*Mattey* v. *Godwin*, 1 Nev. & M. 101), it seems to be immaterial at what stage of the proceedings the rule or order is made. And the verdict is taken for the full amount of damages laid, because the arbitrator cannot go beyond the verdict, nor will the Court allow the

Reference of causes.

Sheriff cannot refer cause.

(*a*) [The sheriff has no authority by consent of parties to refer a cause tried before him upon a writ of trial under the stat. 3 & 4 Will. 4, c. 42, for arbitration; the object of sending cases to be so tried being, that the parties should not be put to the expense of trying before a Judge at Nisi Prius, or referring to arbitration, cases of so simple a nature and of so small an amount. *Wilson* v. *Thorpe*, 6 Mee. & W. 721.]

declaration and verdict to be amended, pending a reference. *Pearse* v. *Cameron*, 1 Mau. & S. 676: *Prentice* v. *Reid*, 1 Taunt. 151: *Bonner* v. *Charlton*, 5 East, 139. However, as a reference may be made, not merely of the matter in difference in the cause, but of all matters in difference between the parties, (see *Malcolm* v. *Fullarton*, 2 T. R. 645: *Smith* v. *Muller*, 3 T. R. 624), it would seem that the arbitrator may, where the reference is so taken, award a larger sum than that laid in the declaration, for which, though the party would not have a remedy under the verdict, he might have a remedy under the award. *Pearse* v. *Cameron*, 1 Mau. & S. 676. But, in *Bonner* v. *Charlton*, 5 East, 139, where the reference appears to have been generally of all matters in difference between the parties, and the arbitrator awarded a sum beyond the verdict, it was held that no assumpsit could be implied to pay the amount awarded, or even the amount for which the verdict was taken: and see *Hayward* v. *Phillips*, 1 Nev. & P. 288. Upon a private reference by bond, the arbitrator may go beyond the penalty; and though the sum awarded cannot be recovered upon the bond, the performance of the award may be compelled by attachment: *Browes* v. *Bruce*, K. B., 9 Geo. 4; Wats. Arbitr. 5, n.]

SUBMISSION BY RULE OF COURT.

Submission of matters out of the cause.

[The reference is not a stay of proceedings in the cause, unless it is so expressed in the rule of Court, 2 Ld. Raym. 789, *ante*, p. 633. And of course when the submission is revoked, or it becomes from other causes impossible to proceed in the reference, the parties are at liberty to proceed; and unless the defendant consents to a new reference, the plaintiff may sue out execution on the verdict, if it has been taken for the full damages. *Harper* v. *Abrahams*, 4 J. B. Moore, 3: *Woolley* v. *Kelly*, 1 B. & Cr. 68: *Woolley* v. *Clarke*, 2 Dowl. & Ry. 158, S. C.: *Wilkinson* v. *Time*, 4 D. P. C. 37. See *Kirkus* v. *Hodgson*, 3 Moore, 64: *Crawshay* v. *Collins*, 1 Swanst. 90: *Hall* v. *Rowse*, 4 Mee. & W. 24.]

Effect of submission on proceedings.

An award, where the submission was by bond or other writing, or by parol, could not be set aside at common law for the misbehaviour of the arbitrators, but the remedy was by a bill in equity. *Veale* v. *Warner*, 1 Saund. 327: *Greenhill* v. *Church*, 3 Ch. Rep. 88; 2 Vern. 101, pl. 95: *Earl* v. *Stocker*, 2 Vern. 251. But where the submission to arbitration was by rule of Court, which was often the case, the conduct of the arbitrators and of the parties to the submission, might, as it still may, be examined into; and if on examination it appeared that the arbitrators had been partial and unjust, or had mistaken the law, the court would not enforce a performance of the award. *Anon.*, 1 Stalk. 71, pl. 4: *Morris* v. *Rey-*

At common law an award could not be set aside for the misbehaviour of the arbitrators.

Where the submission was by rule of Court, the award may be set aside for misconduct.

SUBMISSION BY RULE OF COURT.

nolds, and *Davila* v. *Almanza*, 1 Salk. 73: *Forster* v. *Brunetti*, 1 Salk. 85: *Darbyshire* v. *Cannon*, 1 Mod. 21: *Lucas* v. *Wilson*, 2 Burr. 701. If, however, the conduct of the arbitrators was not, or could not be successfully impeached, the Court of King's Bench, in the reign of Charles II, when Kelynge was Chief Justice, began to compel a performance of the award by *attachment*, as for a contempt of a rule of Court. *Forster* v. *Brunetti*, 1 Salk. 83: *Stiles* v. *Triste*, 1 Sid. 54 (*a*). It afterwards became the common practice to issue out an attachment for not performing an award. And it was found by experience, that the enforcing of the performance of awards by attachment had contributed much to the ease of the subject, as is recited in the preamble of the following statute, 9 & 10 Will. 3, c. 15, intituled, "*An Act for determining Differences by Arbitration.*"

9 & 10 Will. 3, c. 15.

"WHEREAS it has been found by experience, that references made by rule of Court have contributed much to the ease of the subject in the determining of controversies; because the parties become thereby obliged to submit to the award of the arbitrators, under the penalty of imprisonment for their contempt in case they refuse submission: Now, for promoting trade, and rendering the awards of arbitrators the more effectual in all cases for the final determination of controversies referred to them by merchants and traders, or others, concerning matters of account or trade, or other matters, be it enacted &c., that it shall and may be lawful for all merchants and traders, and others desiring to end any controversy, suit, or quarrel, controversies, suits, or quarrels, for which there is no other remedy but by personal action or suit in equity, by arbitration to agree that their submission of their suit to the award or umpirage of any person or persons should be made a rule of any of his Majesty's Courts of Record which the parties shall choose, and to insert such their agreement in their submission, or the condition of the bond or promise whereby they oblige themselves respectively to submit to the award or umpirage of any person or persons; which agreement being so made and inserted in their submission or promise, or condition of their respective bonds, shall or may, upon producing an affidavit thereof, made by the witnesses thereunto, o

Merchants and traders, &c. desiring to end controversies by arbitration, may agree that their submission shall be made a rule of Court.

Agreement so made, to be inserted in their submission, &c.

(*a*) [J. But the conduct of the arbitrators forms no ground for resisting a motion for an attachment, which can only be done for some defect apparent on the award itself. *Holland* v. *Berks*, 6 D. & R. 161: *Brazier* v. *Bryant*, 10 J. B. Moore, 587. In order to impeach an award for partial, corrupt, or improper conduct in the arbitrators, application should be made to the Court to set it aside. See, as to this, *infra*, tit. AWARD.J.]

any one of them, in the Court of which the same is agreed to be made a rule, and reading and filing the said affidavit in Court, be entered of record in such Court, and a rule shall thereupon be made by the said Court, that the parties shall submit to and finally be concluded by the arbitration or umpirage which shall be made concerning them by the arbitrators or umpire, pursuant to such submission; and in case of disobedience to such arbitration or umpirage, the party neglecting or refusing to perform and execute the same, or any part thereof, shall be subject to all the penalties of contemning a rule of Court, when he is a suitor or defendant in such Court; and the Court on motion shall issue process accordingly, which process shall not be stopped or delayed in its execution by any order, rule, command, or process of any other Court, either of law or equity, unless it shall be made appear on oath to such Court, that the arbitrators or umpire misbehaved themselves, and that such award, arbitration, or umpirage was procured by corruption, or other undue means."

SUBMISSION BY RULE OF COURT.

Parties to be finally concluded by such arbitration.

In case of disobedience, party neglecting subject to penalty, &c.,

unless arbitrators misbehave themselves.

Sect. 2. "That any arbitration or umpirage procured by corruption or undue means, shall be judged and esteemed void and of none effect, and accordingly be set aside by any Court of law or equity, so as complaint of such corruption or undue practice be made in the Court where the rule is made for submission to such arbitration or umpirage, before the last day of the next term after such arbitration or umpirage made and published to the parties; anything in this act contained to the contrary notwithstanding."

Corrupt arbitration void, and may be set aside, &c.

[J. The statute is confined to controversies, suits, and quarrels existing at the time of the submission, and which might then be the subject of an action, and does not apply to a case where there was no dispute between the parties, except that which was raised by the submission itself; as, where two persons agree by deed, that one of them shall purchase property belonging to the other, at a price to be fixed by arbitration. *Re Lee and Hemingway*, 3 Nev. & Man. 860. J.] [Nor does it apply to any other agreement relating to a suit than a submission to arbitration. *Steers* v. *Harrop*, 1 Bingh. 133; 7 Moore, 466: *Lyall* v. *Lamb*, 4 B. & Ad. 468.]

What cases within the statute.

The first section of the statute enables parties to make a submission to arbitration by bond, or other writing, a rule of Court (*a*), and thereby puts such submission on the same footing with those by rule of Court. This act is held to be only declaratory of what

The act puts submissions to rule of Court on the same footing as those by rule of Court.

(*a*) [Which may be done in vacation, see *In re Taylor*, 5 Barn. & Al. 217: *Rex* v. *Price*, 2 Cr. & M. 212.]

SUBMISSION BY RULE OF COURT.

Reference by rule of Court.

the law was before in cases where there was a cause depending. *Lucas* v. *Wilson*, 2 Burr. 701. By the second clause of the statute, an award may be set aside for the corruption of the arbitrators, if an application be made to the Court for that purpose, on the last day of the next term after making the award. Upon this clause, the Court cannot set aside an award made in pursuance of the statute, on any other ground but fraud or corruption in the arbitrators. *Anderson* v. *Coxeter*, 1 Str. 301. But though the Court cannot *set aside* the award upon any other ground, yet if there be any illegality or defect on the face of it, the Court will refuse to enforce the award by attachment, and will leave the party to an action on the bond, or on the award itself. *Hutchins* v. *Hutchins*, Andr. 297. For it is discretionary in the Court, whether they will enforce the award by process of contempt or not. *Hales* v. *Taylor*, 1 Str. 695, S. P.: *Pedley* v. *Goddard*, 7 T. R. 73. It is held, that the statute does not give the Court authority to make a *verbal* submission a rule of Court; *Ansell* v. *Evans*, 7 T. R. 1: —— v. *Mills*, 17 Ves. 421: [*Godfrey* v. *Wade*, 6 J. B. Moore, 488;] and therefore an award under a *parol* submission can only be set aside for the misbehaviour of the arbitrators by a bill in equity. *Infra*, tit. AWARD. So, it is held, that the statute does not apply to submissions by *rule of Court*, or by order of *Nisi Prius;* therefore it has been held, that it is not necessary in such case to apply to set aside the award within the time limited by the statute. *Dubois* v. *Medlycott*, Barnes, 45: *Lucas* v. *Wilson*, 2 Burr. 701: *Synge* v. *Jervoise*, 8 East, 465. Which three kinds of submission remain as at common law. [And therefore, a submission by order or rule of Court, or any other submission which cannot be made a rule of Court under the statute, will not exclude the jurisdiction of equity to relieve against the award; but a submission within the statute does exclude such jurisdiction. *Gwinnet* v. *Bannister*, 14 Ves. 530: *Dawson* v. *Sadler*, 1 Sim. & St. 537: *Auriol* v. *Smith*, Turn. & R. 121: *Nichols* v. *Roe*, 3 Myl. & Kee. 431.] In *Rogers* v. *Dallimore*, 1 Marsh. 471; 6 Taunt. 111, the Court of Common Pleas said, that the limitation of the act applied only to cases where an original authority was given by it: that where a cause was referred to arbitration, the Court still reserved a superintending authority over the award, and that it was discretionary with them to afford relief, even though the time limited by the act of Parliament had elapsed. But, in the exercise of this discretion, the Court declared that they should, in general, prescribe to themselves the same rule as the statute has prescribed to them in certain cases: and that,

Parol submission.

As to setting aside an award.

SUBMISSION BY RULE OF COURT.

although under particular circumstances they might think proper to interfere, yet they by no means intended to hold out to parties, that application to set aside awards, where the submission had not been entered into by bond, might be made at any distance of time.

Submissions under the statute may be made a rule of the Court of Chancery.

Mr. Tidd says, "This statute being confined to Courts of *record*, does not, it seems, extend to the Court of Chancery." 2 Tidd's Prac. 853, 7th ed. But although the Court of Chancery, in regard to its equitable jurisdiction, is not a Court of Record, yet, so far as concerns its common-law jurisdiction, it is a Court of Record; 2 Madd. Chan. 2d edit. 712; and such submissions to arbitration under the statute have been made rules of the Court: and on those submissions, attachments have issued against the parties, for not performing the award. *Webster* v. *Bishop*, 2 Vern. 444: *Spettigue* v. *Carpenter*, 3 P. W. 362: *Pownall* v. *King*, 6 Ves. 10: *Smith* v. *Symes*, 5 Madd. 74. See also *Knox* v. *Simmonds*, 3 Bro. C. C. 359. Independently of these cases, it is presumed, that the second section of the act removes every doubt on the subject. [*Re Joseph* v. *Webster*, 1 Russ. & M. 496. In *Auriol* v. *Smith*, Turn. & R. 121, Lord *Eldon* decided, "That a Court of equity was precluded from entertaining a suit which had been made a rule of Court under the statute, after the time allowed by the statute had expired." *Vide ante*, p. 639.]

[The act does not authorize the submission to be made a rule of more than one Court. *Winpenny* v. *Bates*, 2 Cr. & J. 379.]

Stat. 3 & 4 Will. 4, c. 42, ss. 39, 40, 41.

[The act for the further amendment of the law, 3 & 4 Will. 4, c. 42, has the following provisions respecting arbitration:—

Submission to arbitration by rule of Court, &c. not revocable without leave of Court.

Sect. 39 enacts, "That the power and authority of any arbitrator or umpire appointed by or in pursuance of any rule of Court, or Judge's order, or order of *Nisi Prius*, in any action now brought, or which shall be hereafter brought, *or* by or in pursuance of any submission to reference, containing an agreement that such submission shall be made a rule of any of his Majesty's Courts of Record, shall not be revocable by any party to such reference without the leave of the Court by which such rule or order shall be made, or which shall be mentioned in such submission, or by leave of a Judge; and the arbitrator or umpire shall and may, and is hereby required to proceed with the reference, notwithstanding any such revocation, and to make such award, although the person making such revocation shall not afterwards attend the reference; and that the Court, or any Judge thereof, may from time to time enlarge the term for any such arbitrator making his award."

Court or Judge may enlarge time.

Power to com-

Sect. 40. "That when any reference shall have been made by

SUBMISSION BY RULE OF COURT.

Stat. 3 & 4 *Will.* 4, *c.* 42.

any such rule or order as aforesaid, or by any submission containing such agreement as aforesaid, it shall be lawful for the Court by which such rule or order shall be made, or which shall be mentioned in such agreement, or for any Judge by rule or order to be made for that purpose, to command the attendance and examination of any person to be named, or the production of any documents to be mentioned in such rule or order; and the disobedience to any such rule or order shall be deemed a contempt of Court, if, in addition to the service of such rule or order, an appointment of the time and place of attendance in obedience thereto, signed by one at least of the arbitrators, or by the umpire before whom the attendance is required, shall be served, either together with or after the service of such rule or order. Provided always, that every person whose attendances shall be so required shall be entitled to the like conduct-money and payment of expenses, and for loss of time, as for and upon attendance at any trial: Provided also, that the application made to such Court or Judge for such rule or order shall set forth the county where such witness is residing at the time, or satisfy such Court or Judge that such person cannot be found: Provided also, that no person shall be compelled to produce under any such rule or order any writing, or other document, that he would not be compelled to produce at a trial, or to attend more than two consecutive days, *to be named in such order*" (*a*).

Compel the attendance of witnesses and production of documents.

Witnesses' costs.

Application for rule.

Arbitrators may administer an oath.

Sect. 41. "That where in any rule or order of reference, or in any submission to arbitration containing an agreement that the submission shall be made a rule of Court, it shall be ordered or agreed that the witnesses upon such reference shall be examined upon oath, it shall be lawful for the arbitrators or umpire or any one arbitrator, and he or they are hereby authorized *and required*, to administer an oath to such witnesses, or take their affirmation in cases where affirmation is allowed by law, instead of oath; and if, upon such oath or affirmation, any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall be prosecuted and punished accordingly."

Criminal matters.

[Both the statute 9 & 10 Will. 3, c. 15, and the above clauses of the stat. 3 & 4 Will. 4, c. 42, apply to civil proceedings only, and therefore a submission of criminal matters is still revocable. *Rex* v. *Bardell*, 1 Nev. & P. 74; 5 Ad. & El. 619: *Rex* v. *Shillibeer*,

(*a*) [It will be observed, that by a previous part of the clause, the time of attendance is allowed to be fixed by an appointment, signed by one of the arbitrators or umpires. This general power is cut down by the subsequent words.]

5 D. P. C. 238. As to references of criminal matters, see 9 East, 497; 1 East, 46: *Baker* v. *Townsend*, 1 Moore, 120, 287; 7 Taunt. 422: *Watson* v. *M'Cullum*, 8 T. R. 520.]

SUBMISSION TO ARBITRATION.

Stat. 3 & 4 *Will.* 4, *c.* 43.

[Nor do the provisions of the later act apply to courts of equity. *Hall* v. *Ellis*, 3 Jurist, 167.]

If the parties consent that the *award* shall be made a rule of Court, the submission may be made a rule of Court.

[In *Harrison* v. *Grundy*, 2 Str. 1178, it was held, that a consent in the submission bond, to make the *award* a rule of Court, instead of the submission, would not warrant the interposition of the Court, under the statute 9 & 10 Will. 3, c. 15. See also *Anon.*, 2 Barnard. 163. However, in *Pedley* v. *Westmacot*, 3 East, 603, where *Harrison* v. *Grundy* was cited, and it was objected to the Court's entertaining jurisdiction, because the consent in the submission bond was to make the award a rule of Court, instead of the submission to the award, which, it was said, was not within the words of the statute; the Court referred to the case of *Powell* v. *Phillips*, E. 30 Geo. 3, 2 Tidd's Prac. 7th Edit. 854, furnished them by the Master, where the submission bond, stating that the award should be made a rule of Court instead of the agreement, was holden to be no objection; and this, Lord *Ellenborough* said, was the later and more sensible determination; and therefore the objection in *Pedley* v. *Westmacot* was overruled. So if a bond of submission to arbitration between the trustee of a wife and her husband recite that a suit for a separation has been instituted between the husband and wife in the Commons; and that in order to put an end to any contest about the terms of separation, it had been agreed that all matters should be referred to J. S.; and that either of the parties should be "at liberty to apply to *the Court* to make the *award* a rule of Court;" such submission may be made a rule of the Court of Common Pleas, under the statute 9 & 10 Will. 3, *Soilleux* v. *Herbst*, 2 Bos. & P. 444. [*Ex parte Story*, 2 Nev. & P. 667; 4 Ad. & El. 602.] But the proper and usual method is to agree that the submission shall be made a rule of Court.

AMENDMENT.

Amendment of reference.

[A reference either by mere private agreement, or by rule of Court, may be amended by consent before the award is made, and that by writing unsealed, notwithstanding the original submission was under seal.] In the case of *Jenkins* v. *Law*, 8 T. R. 87, the parties having entered into arbitration bonds, with the usual agreement that the submission should be made a rule of Court, it was accordingly made a rule of Court. Afterwards the parties, by an indorsement on the bond, and signed by both of them, agreed that the time for making the award should be enlarged: but it

Enlargement of time by indorsement includes all the terms of the original submission.

AMENDMENT OF SUBMISSION.

Variation of Submission.

was not added, as a part of this agreement, that the indorsement should be made a rule of Court. The arbitrator made his award within the enlarged time. A rule having been obtained, calling on the defendant to shew cause why an attachment should not issue against him for not performing the award, *Garrow*, who now shewed cause, objected, that there being no agreement to make the consent for enlarging the time for making the award a rule of Court, no attachment could issue as for a contempt of the Court. *Bayley*, in support of the rule, admitting that this objection was fatal, the Court discharged the rule. The report does not state whether the agreement was stamped. But in a later case, where the parties, by their respective bonds of submission, dated 20th of August, 1803, bound themselves to submit certain matters in difference to the arbitration of A. and B.; and if they did not make their award on or before the 21st of September then next, then to the umpirage of C., so as he made his umpirage on or before the 24th of September, 1803. By a memorandum on the bonds, dated 21st of September, and not under seal, it was agreed between the parties, that the time for the arbitrators making their award should be extended from that day unto the 24th of September aforesaid, and for making the umpirage to the 1st of October: and by another indorsement on the bonds, signed by the parties, on the 28th of September, the time for making the umpirage was further extended to the 6th of October, which indorsement was stamped with an agreement stamp. An umpirage was made on the 5th of October. In the bonds of submission it was provided, that the bonds and submission thereby made, should be made a rule of Court, pursuant to the statute, if either of the parties should require the same, and the Court should so please. But when the time for making the award was agreed to be enlarged by the indorsment on the bonds before mentioned, it was not added, that that should be made a rule of Court; but the agreement to enlarge was made a rule of Court. A rule was obtained on the authority of *Jenkins* v. *Law*, and it was objected on the part of the defendant, that an agreement to enlarge the time for making an award must contain a new consent that it shall be made a rule of Court, otherwise no award made within such enlarged time can be enforced by attachment. Lord *Ellenborough* said it was a case of considerable consequence, affecting the practice of all the Courts upon the construction of a very beneficial act of Parliament; and therefore, before the Court gave their final opinion, they would consult with the other Judges; though, as at present advised, it appeared to him that the *memoranda* endorsed on the submission bond for enlarging the time did, by necessary

AMENDMENT OF SUBMISSION.

Variation of Submission.

construction virtually incorporate all the conditions in the bond to which they had reference. That they must be taken to do so to a certain extent was apparent; for in themselves the *memoranda* did not even specify the names of the arbitrators or umpire, nor the subject-matter of the reference; and if any part were adopted, he could not see what line could be drawn, and why the whole must not be adopted. *Curia advisare vult.* In delivering the judgment of the Court on a subsequent day, and after referring to *Jenkins* v. *Law*, his Lordship said, "Upon considering that case, in which the objection appears to have been given way to without any argument on the part of the counsel who had obtained the rule for an attachment, and on which account the matter was probably not brought under the immediate view and attention of the Court; and upon conferring, with a view to a uniformity of practice on this subject, with most of the Judges of the other Courts of Westminster Hall, we are of opinion that the case referred to cannot be supported; and that the agreement to enlarge the time for making the award must be understood as by reference, virtually incorporating in itself all the antecedent *agreements* between the parties relative to that subject, as if the same had been formally set forth and repeated therein, and of course incorporating, amongst the rest, the agreement contained in the condition of the bond, that the submission to arbitration should be made a rule of Court; and that, with reference to the enlarged time, instead of the time originally specified in the condition of the bond." Rule discharged, and rule for attachment absolute. *Evans* v. *Thomson*, 5 East, 193.

[In a more recent case, where the submission to arbitration was under seal, and by indorsement signed by the parties, but not sealed, an arbitrator was substituted in the room of one of those named in the deed. The objection was taken that a deed could not be varied by parol, but was overruled by the Court. *In re Tunno and Bird*, 2 Nev. & M. 328; 5 B. & Ad. 496. See *Taylor* v. *Parry*, 1 Scott, N. R. 576; *ante*, Vol. 1, p. 734. The ground of these decisions appears to be, that the subsequent enlargement of time operates as a new submission, incorporating the terms of the former one, which is thereby abandoned as to the term which is varied by the new agreement. And the old obligation under seal would be discharged, because there would be no award made in pursuance of it. *Vide ante*, Vol. 1, p. 408.]

[If the new agreement relate to any matter within the Statute of Frauds, it must be reduced to writing, and signed according to the requisitions of the statute. *Walters* v. *Morgan*, 2 Cox, 369.]

AMENDMENT OF SUBMISSION.

Variation of Submission.

Parol enlargement of time.

[Thus, too, if the parties attend the arbitrator, after the time appointed has expired, or do any other act which recognizes the subsistence of the reference, or the arbitrator's authority; that alone is evidence of a new agreement to submit to his award, and an award made accordingly will bind them. *Rex* v. *Hill*, 7 Price, 636: *Halden* v. *Glasscock*, 8 Dowl. & Ry. 151; 5 B. & Cr. 390: *In re Hick*, 8 Taunt. 694: *Leggett* v. *Finlay*, 3 Moo. & P. 629: *Lawrence* v. *Hodgson*, 1 You. & J. 16: *Stuart* v. *Nicholson*, 3 Scott, 536: *Taylor* v. *Parry*, 1 Scott, N. R. 576. And even where the arbitrators appointed an umpire without authority, the parties having attended the umpire, were held to have bound themselves. *Matson* v. *Trower*, 1 Ry. & M. 17.]

What remedy upon a parol variation of a submission by specialty.

[But, where the subsequent variation is not by matter of as high a nature as the original submission, the remedy on the original submission is gone. Thus, where a recognizance was entered into to pay to the king a certain sum, or such sum as B. should award, and afterwards, by rule of Court, C. was, by consent of parties, substituted as arbitrator in lieu of B.: it was held, that the recognizance was not forfeited by non-performance of C.'s award, the rule of Court not being a record, or of so high a nature. *Rex* v. *Bingham*, 3 You. & J. 101. Again, in an action upon an arbitration bond, in which a time was limited for making the award, the declaration stated, that the time was afterwards enlarged by the mutual consent of both parties, within which time the award was made, and then stated the breach, &c. Upon demurrer, Lord *Kenyon*, C. J., said, that the question was not then to be discussed, whether the party had not some remedy, but whether his remedy lay on the bond, to determine which, the Court must look to the bond; and there it appeared that the defendant had bound himself to abide by an award, under a penalty, if made within a given time; but that could never extend the penalty to an award made after that time under a new agreement; and to this the other Judges assented. *Brown* v. *Goodman*, cit. *Littler* v. *Holland*, 3 T. R. 592, n.]

[In *Brown* v. *Goodman*, the agreement to enlarge the time named in the condition to a bond must have been oral, or by writing unsealed; (see *Thompson* v. *Brown*, 7 Taunt. 655); for it is settled, that the defeazance to an obligation under seal may be varied by deed before breach. See *Fowell* v. *Forrest*, 2 Wms. Saund. 47, n. Thus, in the case of *Greig* v. *Talbot*, 2 B. & Cr. 179; 3 Dowl. & Ry. 446; a bond was given, conditioned for the performance of an award to be made on or before a certain day; before the day

Defeazance to bond may be varied by deed.

AMENDMENT OF SUBMISSION.

Variation of Submission.

arrived, the parties to the bond, by deed-poll indorsed on the bond, gave the arbitrators further time for making their award. The award having been made after the day named in the bond, and before the day named in the indorsement, it was held, that an action would be maintained on the bond for non-performance of the award. *Bayley*, J., said—"This is an action upon a bond, the condition of which was originally for the performance of an award to be made on or before the 1st of February; no award was made within that time, but before the 1st of February, and while the bond still remained in force, an agreement under seal was executed by each of the parties named in the bond, by which they gave to the arbitrators further time until the 1st of March to make their award; and the question is, what is the legal effect of the second deed? Is it merely to give a remedy upon that deed; or is it, in substance, to vary the day mentioned in the condition of the bond, and to introduce as a term into that condition the extended period of time for making the award? The words import, that all the parties are to be placed in the same situation, as if that extended period had been inserted in the original condition." And *Holroyd*, J., as to the validity of a subsequent defeazance, said—"Co. Litt. 237., shews, that an obligation may be defeated by a defeazance made either at the time when an obligation is executed, or at any time after; and the passage cited from Sheppard's Touchstone, 398, is confirmatory of that doctrine, and goes further to shew, that, where several defeazances are made at different times, the last shall stand. The distinction is between things vested, and a thing executory. As, in a feoffment of lands, there the estate is vested in the feoffor, and therefore a subsequent condition is void; but a bond is only executory, and may be defeated at any time by a deed, although not executed at the same time with the bond; and if there be two defeazances, the last is considered as a substitution for the first. And in Comyn's Digest, tit. DEFEAZANCE, (B. 2), it is laid down, that an obligation may be defeated by a defeazance even after condition broken as well as before."

Unless the heir be named in a writing under hand and seal, he is not bound.

It seems that the heirs of the parties cannot be bound by an award made during the enlarged time, unless the indorsement be made under hand and seal. [But although the heir must be expressly named in a writing under hand and seal to bind him, Bac. Abr. Gwill. Ed. 458, *Heir*, &c. (F), yet as the indorsement includes the terms of the original agreement, (*Evans* v. *Thompson*), it seems that it is not necessary to name the heirs of the parties again in the indorsement.] For the purpose of binding the heirs it is not requisite that the writing should be delivered as a deed, *Gifford* v.

AMENDMENT OF SUBMISSION.

Variation of Submission.

Manley, Cas. temp. Talb. 109, and therefore a deed stamp is not necessary. See further as to enlarging the time, *infra*, tit. AWARD.

Parol abandonment.

[On the other hand, a parol agreement to abandon a reference is no defence to an action on a bond for non-performance of an award duly made in pursuance of the bond. *Braddick* v. *Thompson*, 8 East, 344.]

Amendment of rule of Court.

[The Courts cannot vary the agreements of parties to a submission; *Pearman* v. *Carter*, 2 Chitt. 29; see *Rawtree* v. *King*, 5 Moore, 167; but, if the rule of Court does not perfectly express the intention of the parties at the time the submission was made, it may be amended. Thus, where upon a motion by the defendant to put off a trial for the sake of obtaining time to amend his pleas, and to discover evidence of certain facts material to his defence, for which purpose a bill of discovery in equity would be expedient, the cause was referred by order of *Nisi Prius* upon the usual terms, (contained in a printed form), of, among others, filing no bill in equity. The order was amended (*a*). *Grimstone* v. *Bell*, 4 Taunt. 254. So, where the rule directed that the defendant should sell certain property to the plaintiffs at a valuation, it was amended by directing that the defendant should make a good title and execute a conveyance. *Evans* v. *Senor*, 5 Taunt. 662.]

If all matters in difference *in the cause* are agreed to be referred, and the associate, by mistake, draws up the order of reference generally, as to all matters of difference *between the parties*, it cannot be amended; but the parties must go down to another trial. *Rawtree* v. *King*, 5 J. B. Moore, 167.

Setting aside the order for reference.

[As to setting aside the order for reference, (as distinguished from the *award*), which will sometimes be done instead of amending it, where it has been erroneously drawn up, or obtained by fraud, see *Rawtree* v. *King*, 5 J. B. Moore, 167: *Doe* d. *Carlisle* v. *Morpeth*, 3 Taunt. 378: *Filmer* v. *Delber*, 3 Taunt. 486: *Fussell* v. *Silcox*, 5 Taunt. 628: *Sackett* v. *Owen*, 2 Chitt. 39.]

CONSTRUCTION OF SUBMISSION.

What included in submission.

[As to the extent of a submission, the distinction between a reference of "all differences in the cause between the parties, and of all differences between the parties in the cause," has been already

(*a*) [It seems that it is beneath the dignity of a Court of equity to aid the proceedings before an arbitrator by granting relief upon a bill of discovery; *Wellington* v. *Mackintosh*, 2 Atk. 569; where, however, the relief was refused on the ground that the arbitrators could not examine on oath; *Mitchell* v. *Harris*, 2 Ves. jun., 129 a: *Street* v. *Rigby*, 6 Ves. 815. Now that arbitrators may administer oaths, the relief would probably be granted.]

noticed; *ante*, p. 637. A reference of all *actions* does not include causes of action, but only actions pending, whether personal or mixed. Co. Litt. 285; Roll. *Arbitr.* (D. 7). A reference of *all demands* includes every thing in dispute, real or personal, and claims in *autre droit*. Stiles, 170; 3 Bulst. 311; Keil. 99; Vin. Abr., *Arbitr.* (D.); Cro. Jac. 447; *Morse* v. *Sury*, 8 Mod. 212. A reference of all *debts and demands* includes debts on record and executions. *Roberts* v. *Mariett*, 2 Saund. 190. A reference of all matters in difference does not include a cause of action accrued, but not in difference at the time. *Ravee* v. *Farmer*, 4 T. R. 146: *Seddon* v. *Tutop*, 6 T. R. 607: *Thorpe* v. *Cooper*, 2 Moo. & P. 245. But it is otherwise of a reference of all action and causes of action. *Smith* v. *Johnson*, 15 East, 213: *Dunn* v. *Murray*, 9 B. & C. 780.]

CONSTRUCTION OF SUBMISSION.

[A reference of all actions between A. and B. does not include actions in which any third person, even the wife of A. or B., is a party. Roll. *Arbitr.* (D. 4.): *Fisher* v. *Plimbley*, 11 East, 189. But a reference of matters between A. and B. on the one side, and C. of the other, includes matters between any two of them. *Baspole's case*, 8 Rep. 97: *Sallowes* v. *Girling*, Yelv. 203; *Athelstone* v. *Moore*, Com. 547: *Carter* v. *Carter*, 1 Vern. 259: *Winter* v. *White*, 3 J. B. Moore, 674; 1 Br. & B. 350; see *Garland* v. *Noble*, 1 J. B. Moore, 187.]

Joint and several Submissions.

Effect of joint and several submission.

Where parties agree jointly and severally to refer disputes to arbitration, and bind themselves jointly and severally to perform the award, if each of two or more parties on one side be ordered to pay any sum of money, or to do any particular act, each is answerable, not only for the performance of what is particularly awarded that he shall perform himself, but also for the obedience of the others on the same side to the award. Thus, in a modern case, there being disputes between A. and B., who had been in succession tenants of a farm, and C. the in-coming tenant, respecting the repairs, &c., by an agreement in writing between A. of the first part, B. of the second part, and C. of the third part, the said parties jointly and severally agreed to refer all matters in dispute between them, or any or either of them, to arbitration; and A. and B. thereby, for themselves, their executors, &c., *jointly and severally* undertook, promised, and agreed to and with C. that they and their and each of their executors, &c., would, on his and their respective parts, abide by, perform, and keep the award; and C. undertook, and promised, to and with A. and B. jointly and severally, and their respective executors and administrators, to perform the award on his part. The arbitrator awarded that A. and B. should each

CONSTRUCTION OF SUBMISSION.

Joint and several Submissions.

of them pay a certain sum to C.; and nothwitstanding the arbitrator awarded nothing to be done by C. *and* D. jointly, yet it was held that they were *jointly* responsible for the sum awarded to be paid by each. Lord *Kenyon*, in delivering the judgment of the Court, said—"This is rather a hard case on these two tenants: perhaps if it had been stated to them at the time of the agreement, that each was to become answerable for the other, they would have hesitated before they signed the agreement; but the words of the agreement are too strong to be got over. It was reasonable that each should make satisfaction for the time he occupied; but by the terms of this agreement they have promised jointly and severally, which makes them responsible the one for the other." *Mansell* v. *Burridge*, 7 T. R. 352. See also *Johnson* v. *Wilson*, Willes, 254: *The Duke of Northumberland* v. *Errington*, 5 T. R. 522. This doctrine of joint responsibility had been carried to a greater extent in a more ancient case. For where there was a controversy between A. the heir at law of a testator, and B. and C. his devisees, concerning certain lands devised to them; and by a deed between A. of the one part, and B. and C. of the other part, they submitted to the award of an arbitrator, and thereupon A. bound himself in an obligation of £1000 to B. and C., with a condition to perform the award of the arbitrator touching the controversy: and B. and C., because they would not be bound the one for the other, entered into several obligations of £1000 each to A., with several conditions for the performance of the award of the arbitrator; and he awarded that A. should make a release of all his right in the land to B. and C., and that, in consideration thereof, B. and C. should pay £300 to A. In an action of debt by A. against B. upon his obligation for non-performance of the award, the breach assigned was, that neither B. nor C. paid the £300 at the time appointed, according to the award; and all the above-mentioned matters were disclosed by the pleadings. It was argued for the defendant B. that the arbitrament was void; for the defendant's bond was for a reference of all controversies between A. and B., and C. was not mentioned in the bond; and the award was between A., B., and C., and that B. and C. should pay such a sum; and the breach was alleged therein; and for anything that appeared in the bond and condition, C. was a stranger to the submission, unless by this collateral surmise, which surmise was not allowable; also that this surmise was *quasi* a departure from the declaration. But on a demurrer, after divers arguments at the bar, the Court resolved, that forasmuch as this is not a bare surmise, but grounded upon a deed, which is of as high

Joint submission by deed, and separate several obligations; joint award.

a nature as the bond, and made at the same time, it is a *quasi* but one submission by several bonds, and so the surmise is allowable, and stands well with the bond in question. And although B. and C. did not join in one bond of submission, because they would not be bound one for the other, yet when at the same time they entered into several bonds to perform the award, it is but as one submission, and is not any departure from the declaration. For it is not fitting that the declaration (which is but for the debt upon the bond of B.) should mention any such submission: but it suffices to shew it by the replication to maintain this arbitrament. For upon all the matter being shewn, it appears that C. is no stranger to the award, for he and B. submitted themselves jointly; and though they entered into several obligations, yet this did not make C. any stranger to the award. And therefore all the Court adjudged that the award was good, the replication being good enough to maintain the arbitrament, notwithstanding this objection. *Hayes* v. *Hayes*, Cro. Car. 443, S. C.: *Haies* v. *Haies*, 1 Roll. Abr. 247, pl. 9; 3 Vin. Abr. 54. Mr. Kyd says, "But in such a case, if the award had been several, certainly the one could not have been sued for non-performance on the part of the other." Kyd on Awards, 45, 2nd Edit. Yet it seems, that, in consequence of the submission by deed, each would, in case of a several award, have been liable for the other. For where three entered into an obligation to perform an award concerning disputes between them and another, and the arbitrator awarded that each of the three should pay the other twenty shllings a piece, it was held that each was answerable for all the payments; and that a tender of twenty shillings by one was not a performance of the award on his part. *Genne* v. *Tinker*, 3 Lev. 24; Wms. n. 1 Saund. 325 (3). So where the covenant is joint and several, in an action against one only, the breach may be assigned in the neglect of both. *Lilly* v. *Hedges*, 1 Str. 552.

CONSTRUCTION OF SUBMISSION.

Joint and several Submissions.

Several award.

But the parties on the same side are not without their remedy, in case either of them should suffer by the default of his companion. For a compensation may be recovered by him who actually performs the award, from such of his co-obligors as neglect their share of the duty imposed by the award. Thus where arbitrators directed that each of two parties on the same side should pay a moiety of the costs of the arbitration, and of making the submission a rule of Court; and one party, in order to get the award out of the hands of the arbitrators, paid the whole; it was held, that he might have an attachment against the other to compel repayment of the moiety. *Hicks* v. *Richardson*, 1 Bos. & P. 93. And see *Stokes* v. *Lewis*, 2 Smith,

The party who pays may recover from his companions their quota.

CONSTRUCTION OF SUBMISSION.

12. An action would have been maintainable, if the party had preferred that mode of proceeding. Caldwell on Arbitration, 145, 167.

On a submission, six partners give cross, joint, and several bonds, three to three; an award that one should pay to his co-obligor is good.

Where six partners entered into two bonds of submission to arbitration; in one of the bonds, three gave a joint and several bond to the other three, conditioned for the due performance of the award; and the latter gave a similar bond to the three former; the arbitrator awarded that one of the three former should pay a certain sum to one of his co-obligors. In an action of debt on the award, brought by the one against the other alone, it was held, (Justice Richardson, *dissentiente*), that he might recover the sum awarded. *Winter* v. *White*, 3 Moore, 674: 1 Br. & B. 350.

WHO MAY REFER.

Who may make a Submission.]—The assent of the attorney in a cause to a reference, by a rule of *Nisi Prius*, will bind the client; for the employing an attorney in a particular suit, implies the client's assent that he may do every thing which the Court may approve in the progress of the cause. Bac. Abr. *Arbitr.* (C.) Carth. 412; *Buckle* v. *Rooch*, 1 Ch. 193; Kyd on Awards, 45, 2nd Ed.: *Paull* v. *Paull*, 2 D. P. C. 340. See *Thomas* v. *Hewes*, 2 Cr. & M. 519. And it seems, the same principle equally applies to a reference by the attorney of an appellant or respondent, at the quarter sessions.

Attorney in a cause.

After an order of reference has been made, with the consent of counsel and attorney, the Court will not set it aside on an affidavit by a party, stating that he had expressly desired his attorney not to consent to any rule of reference, though the application be made before any step is taken by the arbitrator, excepting the appointment of a distant day for a meeting, in order to afford time for application to the Court to set the rule aside. The defendant's remedy is by action against his attorney. *Rex* v. *Addington*, Sayer, 259. There would be no end to these applications, if the Court were to interfere, as such interference would lead to collusion; for, whenever a party did not like the prospect of the reference, he would say, that he had never given his attorney authority to refer. *Filmer* v. *Delber*, 3 Taunt. 486. See *Mole* v. *Smith*, 1 Jac. & W. 675. And in a subsequent case, the Court of Common Pleas again refused to set aside an order of *Nisi Prius*, referring a cause to arbitration, on an affidavit by the defendant, that she desired her attorney not to refer. 1 Chit. Rep. 193. See *Furnival* v. *Bogle*, 4 Russ. 142.

Under an order of reference an attorney may extend the time

So, under an order of reference, an attorney may extend the time for making an award. Thus, where the defendants, in an extent in aid, withdrew their plea, and suffered judgment to be

WHO MAY REFER.

Reference by Attorney.

for making an award.

entered up on an agreement, and order of reference thereon, to submit to arbitration the question of the amount of what was due to the prosecutor, provided the award should be made by a given time, and the arbitrator did not make his award till after the expiration of a further period, to which it had been agreed to extend the time, in consequence of the defendant's having delayed to furnish him with the name of a trustee, which was required to make part of the award, and the defendant's solicitor *afterwards* wrote a letter to the arbitrator, urging him to re-consider the subject of his allowances, which was refused, as the reference was considered to be closed; it was held by the Court, that, under those circumstances, the delay in making the award had not invalidated it, as being made after the expiration of the arbitrator's authority; and therefore they refused to set aside the judgment, and the proceedings thereon, *and the award*, and allow the defendants to plead to the extent. Lord Chief Baron *Richards* said—"The judgment and the award must be taken together, or the judgment would not be regular. The question therefore is, whether this is a good award or not. It is said it is not, because not made in time; that is, not by the 1st of September. It certainly was not, in fact, and therefore *primâ facie* it could not be good, unless by the conduct of the parties, they have made it effectual by giving it their assent. I think it is quite clear that they have done so in this instance, under the circumstances of the case. Besides the other conduct of the defendants, all of which speaks a full assent to all that had taken place, there is the letter of their solicitor, written seven days after the 1st of September, requiring further matters to be still considered by the arbitrator, which he refuses to do. It is impossible not to hold that letter to be an assent to the enlargement of the time, as it was written with a view to the award which the arbitrator *was* to make." Mr. Baron *Graham* concurring, said—"This would be an exceedingly clear case, in my view of it, if it had stood upon the letter of the defendant's solicitor alone, for that was an express recognition and assent, applying to all that had then taken place; and no subsequent verbal assent could destroy the effect of that letter. They were of course aware of all that had been then done before the arbitrator, and that they had no new evidence to produce. Beyond all doubt, this amounted to an express consent to enlarge the time." And Mr. Baron *Garrow* said—"I consider the letter an authority to the arbitrator equal even to a rule of Court. *Rex* v. *Hill*, 7 Price, 644. Therefore, under an order of reference, although the time for making an award has expired, the

Letter sent to the arbitrator by defendant's attorney, at the request of his client, urging him to reconsider the subject of his allowances, is a consent to enlarge the time.

WHO MAY REFER.

authority of the arbitrator may be revived by an unstamped instrument. As to the general doctrine respecting the enlargement of the time for making an award, *vide infra*, tit. AWARD.

Reference by Attorney.

Assent of a solicitor to a reference by rule of a Court of *equity;*

The assent of a solicitor to a reference by rule of a Court of equity, it has been holden, is not obligatory upon the client, without his actual concurrence; though in the same case it is admitted, that such a reference by rule of *Nisi Prius* will bind the client. *Colwall* or *Colwell* v. *Child*, 1 Cha. Rep. (104), 195, Edit. 1693; 1 Cha. Cas. 86. But the authority of this case may now be doubted; 1 Gwill. Bac. Abr. 208, (*a*); for the character of a solicitor is equally known to the law as that of an attorney: their duty and their privileges are the same; the confidence reposed in them the same; they only differ in name, and practice in different Courts.

must be specially averred where some of the parties are infants.

[J. It was held where an action was brought for the recovery of a sum awarded to the plaintiff, under a reference made by an order of the Vice-Chancellor, that it was not sufficient to allege that the reference was made with the consent of the attornies of the parties in the suit, *inasmuch as some of the parties were infants*, who could not be bound, and it was not to be presumed that their next friends, by whom they were represented, intended to make themselves personably responsible for the infant's concurrence when of age. If this were the case, it ought to have been specially averred and shewn. The agreement for the reference therefore not being obligatory on all the parties, an action could not be sustained, the submission not being mutual. *Biddell* v. *Dowse*, 6 Barn. & Cr. 255; reversing judgment in C. B., *Dowse* v. *Coxe*, 10 J. B. Moore, 272. In this case the Lord Chief Justice expressly intimated his wish not to be understood as admitting that the consent of the attornies was sufficient even as to the *adult* parties.J.] [See *Iveson* v. *Carrington*, 2 Dowl. & Ry. 207; 1 B. & Cr. 160: *Thomas* v. *Hewes*, 2 Cr. & M. 519.]

Reference by agent.

[The power of an agent to bind his principal by a submission to arbitration, will depend upon the nature and terms of his authority. If that is not under seal, his submission by deed will not, of course, bind his principal as a specialty. A power of attorney given by a partner to his son, to act on his behalf in dissolving the partnership, with authority to appoint any other person as he might see fit, was held to authorize a reference of accounts to arbitration. *Henley* v. *Soper*, 2 Man. & Ry. 153; 8 B. & Cr. 18. See, as to the power of a factor, *Curtis* v. *Barclay*, 7 Dowl. & Ry. 539; 5 B. & Cr. 141.]

WHO MAY REFER.

[If an agent enter into a submission in his own name, although he describes himself as agent or attorney, he is bound personally, and not his principal. *Bacon* v. *Dubarry*, 1 Ld. Raym. 246: *Cughill* v. *Fitzgerald*, 1 Wils. 58. See *ante*, Vol. 1, p. 428: *Alsop* v. *Senior*, 2 Keb. 718: and *Burrell* v. *Jones*, 2 B. & Al. 47: *Ex parte Hughes*, 5 B. & Al. 482.]

Agent when bound personally.

Submission by Infant, &c.]—It has been held, that an infant may submit to arbitration, but that it is optional with him whether he will abide by the award when he comes of age. *Knight* v. *Stone*, Jon. 164: *Stone* v. *Knight*, Lat. 207; Noy, 93, *S. C.*; 7 Bac. Abr. Gwill. Ed. 67, *Void and Voidable* (C). However, it has also been held, that the submission of an infant is void, and not merely voidable. *Rudston* v. *Yates*, Mar. 112, 141: *Gill* v. *Russell*, Freem. 139: *Bowyer* v. *Blorkside*, 3 Lev. 17; [and see *Godfrey* v. *Wade*, 6 J. B. Moore, 488: *Biddell* v. *Dowse*, 9 Dowl. & Ry. 404; 6 B. & Cr. 255, reversing *Dowse* v. *Cox*, 10 J. B. Moore, 272: *Wrightson* v. *Bywater*, 3 Mee. & W. 199]; and, upon principle, this seems to be the better opinion. The Court of Chancery will not decree the performance of an award which shall bind an infant. *Cavendish* v. ————, 1 Ch. Cas. 279; 1 Eq. Ab. 49.

The submission of an infant is voidable, if not void.

But, though an infant cannot submit, yet his guardian may submit for him, and bind himself that the infant shall perform the award. *Roberts* v. *Newbold*, Comb. 318: *Gill* v. *Russell*, Freem. 62, 139. See *Bishop of Bath and Wells* v. *Hippesley*, cit. 3 Atk. 614, where an infant seems to have been bound by a joint reference by himself and guardian. Consequently, any other person, as well as a guardian, may be bound for an infant's performing an award.

But a guardian, or any other person, may bind himself that an infant shall perform an award.

[In the case of *Bristow* v. *Binns*, 3 Dowl. & Ry. 184, a reference of disputes concerning the repair of a wear upon property of which an infant was tenant for life, was made by the infant's trustees and testamentary guardians. An award made against the trustees, after the death of the infant, was set aside as to them, but it does not appear upon what ground. Whatever may be the binding effect of a reference by trustees or guardians as against themselves, it is obvious that specific performance of an award against them would not be enforced, unless it were clearly for the benefit of the trust estate or infant.]

[A married woman is clearly incapable of referring to arbitration any question concerning rights as to which she is coverte, Roll. Abr. *Arbitr.* (D.), 43; nor can the Court refer it to the Master, to inquire whether such a reference would be for her benefit. *Davis* v.

Submission by *feme coverte*.

WHO MAY REFER.

Page, 9 Ves. 350. See *Emery* v. *Wase*, 5 Ves. 846. But, of course, she may refer a question relating to her separate estate. On the other hand, the chattels, real and personal, and the legal choses in action of a married woman, may be bound by an award made in pursuance of a reference by the husband. *Lumley* v. *Hutton*, Cro. Jac. 447; 1 Roll. 268; Bac. Ab. *Bar. & F.*, C. 1; Com. Dig. *Bar. & F.*, E. 1.]

Direction in will as to arbitration.

It has been said, that no man could appoint by his will, that, if any difference should arise on the construction of it, it should be determined by J. S., and that his determination should be final. Skin. 454, 471, cited 2 Kyd on Corporations, 206. But supposing the law to be so, although it seems the liberality of our Courts in modern times would determine otherwise, yet the question may be easily avoided by making all the devises and bequests subject to such a condition.

Submission by Executor.

An executor or administrator may, as such, submit to arbitration.

An executor or administrator may, as such, submit a matter in dispute between another and himself in right of his testator. Therefore, when the executor of a parson submitted to arbitration a dispute between the present incumbent and himself, as executor of the last incumbent, on account of some dilapidations of the parsonage, alleged to have been permitted by the default of the testator and in his life, no objection was made to the want of power in the executor to submit. *Browne* v. *Meverell*, Dyer, 216 b. But if the arbitrator do not award as much as the executor or administrator would be entitled to at law, it will be a *devastavit* for the residue, and he must account for the deficiency to those who are interested in the effects of the testator or intestate. Com. Dig. *Administration*, (I. 1), *Assets*, (C.) *ad finem*, 1 Bac. Abr. Gwill. Ed. 207, 208. As, if an executor submit to arbitration, and it be awarded, that for £70 he release an obligation given to his testator in £100 for performance of covenants which were broken by the obligor, the £100 shall be assets; for the submission is his own act. *Anon.*, 3 Leon. 53: *Yard* v. *Ellard*, 1 Ld. Raym. 369; Wentw. Off. Ex., Wils. Ed. 71, 160.

But, if so much is not awarded as the executor would be entitled to at law, it will be a *devastavit* for the residue.

A submission by an executor or administrator, when an admission of assets.

If a man, in the character of executor or administrator, expressly binds himself, his heirs, executors, and administrators, to perform an award to be made on the subject of disputes between his testator or intestate and another, and also concerning all other matters, accounts, &c., between the parties, or either of them, and the arbitrator award generally, that, as executor or administrator, he shall pay a certain sum, he cannot, in an action on the bond, avail himself of a plea, "that he had fully administered, and that he had no

WHO MAY REFER.

Submission by Executor.

assets of his testator or intestate at the time of the submission, or since:" the plea being inapplicable to the case; for the party, by such a submission, enters into a personal engagement to pay whatever the arbitrator shall direct, without any regard to the question of assets. *Barry* v. *Rush*, 1 T. R. 691; 5 T. R. 8. [*Worthington* v. *Barlow*, 7 T. R. 453. And see *Wansborough* v. *Dyer*, 2 Chit. 40; *post*, 659.]

But it has been held, that the mere act of submission, as executor or administrator, is not, of itself, an admission of assets: [*Contra Robson* v.——, 2 Rose, 50: *Riddell* v. *Sutton*, 2 Moo. & P. 345; 5 Bing. 200. See *Love* v. *Honeybourne*, 4 Dowl. & Ry. 814]: and that, if an executor or administrator, as such, submit to arbitration, and the arbitrator simply declare a debt due from the testator or intestate, specifying the amount, without saying by whom it is to be paid, the executor or administrator is not precluded from the plea of "fully administered." And it was also held, that in such a case the plaintiffs cannot, in an action of *assumpsit* against the executor or administrator, in that character, give evidence of a verbal promise to pay whatever shall be found due; because, in the first place, the action seeks to recover the demand out of the testator's or intestate's effects, and if there be no assets, the personal promise by the representative is *nudum pactum*. *Pearson* v. *Henry*, 5 T. R. 6; Kyd, 39, 2nd Ed. But it seems that, in an action against the defendant, independently of his character of executor, the plaintiffs might have recovered on his verbal submission. *Ante*, p. 645; *Purslow* v. *Bailey*, 2 Ld. Raym. 1040; Wms. n. 1 Saund. 62 b, (5). However, the above case of *Pearson* v. *Henry* is not to be understood as establishing a general principle: for where, under a reference between the plaintiff and the defendant, an administratrix, the arbitrator had ascertained the amount of the plaintiff's demand, and directed the defendant to pay it; and, on shewing cause against a rule for an attachment for non-performance of the award, it was urged that the administratrix had no assets, and that the submission to an award by an administratrix was not an admission of assets, as was said in *Pearson* v. *Henry*: but Lord *Kenyon*, C. J., said—"The decision in *Pearson* v. *Henry* must be taken with reference to the facts of that case. There the arbitrator only ascertained the amount of the demand, without ordering the administrator to pay it: but here the arbitrator has awarded that the defendant, the administratrix, shall pay the plaintiff's demand. The submission to arbitration by the administratrix was a reference not only of the cause of action, but also of the other question, whether

WHO MAY REFER.

Submission by Assignees in Bankruptcy.

or not the administratrix had assets. And as the arbitrator has awarded the defendant to pay the amount of the plaintiff's demand, it is equivalent to determining as between these parties that the administratrix had assets to pay this debt. The defendant, therefore, is concluded by this award, though it will not operate as an admission of assets in any other action to be brought by any other creditor." *Worthington* v. *Barlow*, 7 T. R. 453. [See *Barry* v. *Rush*, 1 T. R. 691: *Re Joseph & Webster*, 1 Russ. & M. 496.] Therefore, wherever it is doubtful whether the executor or administrator will have sufficient assets to answer the sum likely to be awarded, it should be expressly declared that he shall not be answerable any further than the assets extend. [*Riddell* v. *Sutton*, 2 Moo. & P. 345.] *Vide post*, p. 659.

A demand as executor or administrator is within a general submission;

A demand as executor or administrator is within a general submission to an award. Thus, in an action of debt upon an arbitration bond, it appeared, that the plaintiff and the defendant thereby submitted all matters in difference between them, or either of them. The arbitrators awarded £30 to the plaintiff in full of all demands, either in her own right, or as executrix of her husband. And, on demurrer, it was insisted that the arbitrators had exceeded their authority. And Carth. 118, was cited, and the case put of a grant of *omnia bona et catalla sua*, which does not pass goods *en autre droit*. But the Court held, that the submission was general enough, for the demand as executrix was a matter depending between them. And 1 Roll. Abr. 246, pl. 2, 3; 3 Buls. 65, are strong to this purpose. And though in Cro. Car. 433, [*quære*, *Lumley* v. *Hutton*, Cro. Jac. 447], there is an averment, that both sorts of demands were submitted, yet the Court held it was not necessary. And the plaintiff had judgment. *Elletson* v. *Cummins*, 2 Str. 1144. So, if a woman be indebted to J. S. in a certain sum, as administratrix to J. D., and she takes a husband, and the husband and J. S. submit all matters between them to the award of W. N., he may make an award of this debt, which is due by the husband and wife, though it be due in the right of his wife, and as administratrix; for he is now chargeable by the intermarriage. *Lumley* v. *Hutton*, 1 Roll. Abr. 246, pl. 2; Cro. Jac. 447; Roll. Rep. 269, *S. C.* So, upon such a submission, the arbitrator may make an award of a debt due to a woman as executrix. 1 Roll. Abr. 246, pl. 2; 3 Vin. Abr. 51.

although it be by the husband of an executrix or administratrix.

Submission by assignees in bankruptcy.

[By stat. 6 Geo. 4, c. 16, s. 88 (*a*), "The assignees with the con-

(*a*) [As to the powers of assignees of *insolvents*, see stat. 7 Geo. 4, c. 57, s. 24, re-enacted by the 1 & 2 Vict. c. 110, s. 52, stated *infra*, p. 660.]

WHO MAY REFER.

Submission by Assignees in Bankruptcy.

sent of the major part in value of creditors who shall have proved under the commission, present at any meeting whereof and of the purport whereof twenty-one days' notice shall have been given in the *London Gazette*, may compound with any debtor to the bankrupt's estate, and take any reasonable part of the debt in exchange for the whole, or may give time or take security for the payment of such debt, or may submit any dispute between such assignees and any persons concerning any matter relating to such bankrupt's estate, to the determination of arbitrators to be chosen by the assignees and the major part in value of such creditors, and the party with whom they shall have such dispute; and the award of such arbitrators shall be binding on all the creditors; and the assignees are hereby indemnified for what they shall do according to the directions aforesaid. And no suit in equity shall be commenced by the assignees without such consent as aforesaid; Provided that if one-third in value or upwards of such creditors shall not attend at any such meeting, (whereof such notice shall have been given as aforesaid), the assignees shall have power, with the consent of the commissioners, testified in writing under their hands, to do any of the matters aforesaid."]

Assignees, with consent of the major part in value of the creditors present, may submit disputes to arbitration.

[The stat. 1 & 2 Will. 4, c. 56, s. 43, enacts, "That if the assignees of any bankrupt's estate shall agree to refer any matter in dispute with any party, to arbitration, in such manner as by law they are empowered to do, such agreement of reference may be made a rule of the Court of Bankruptcy by this act constituted, and thereupon all such rights and remedies, duties and liabilities, shall accrue from such reference so made a rule of the said Court in respect of arbitration and award and non-performance of such award and otherwise howsoever, as by law at present accrue upon any submission of reference made a rule of any of his Majesty's other Courts of Record." By Gen. Ord. Jan. 12, 1832, all agreements of reference to be made rules of the Court of Bankruptcy, shall be so made by order of the Court of Review, and all matters arising thereon shall be heard and determined by the Court of Review.

Stat. 1 & 2 Will. 4, c. 56, s. 43, reference may be made a rule of Court of Bankruptcy.

The creditors present at a meeting cannot give the assignees a general power for this purpose; but the assignees must have a meeting of creditors, upon notice given for that purpose in the *London Gazette*, to consider of each particular case for arbitration, before they can proceed to a reference. *Ex parte Whitchurch*, 1 Atk. 91. Per Lord *Kenyon*, *Nerot* v. *Wallace*, 3 T. R. 23. [Creditors may vote by proxy, *Bannatyne* v. *Leader*, 3 Myl. & Cr. 379. The clause in the act 6 Geo. 4, c. 16, does not disable the assignees

The creditors cannot give assignees a general power to refer.

WHO MAY REFER.

Submission by Bankrupts' & Insolvents' Assignees.

from prosecuting suits, &c., without the sanction of the creditors; but only renders them liable for the consequences to the creditors: *Jones* v. *Yates*, 1 You. & J. 337: *Piercey* v. *Roberts*, 1 Myl. & K. 4.]

A general reference by assignees is an admission of assets.

[J. A reference to arbitration of all matters in dispute by assignees of a bankrupt, and a consequent award to pay a sum of money, is conclusive upon them as to assets; for if they think fit to refer generally all matters in dispute to arbitration, without protesting against the reference being taken as an admission of assets, it will amount to such an admission. *Robson* v. ——, 2 Rose, 50.J.]

Trustees of insolvent debtor entering into arbitration bond, admit that they have assets, and may be directed to pay costs.

It has been held, that trustees of an insolvent debtor, by entering into an arbitration bond, confessed that they had sufficient funds; and by referring all matters in difference, and agreeing to pay what should be awarded, they had made themselves responsible for the payment of costs. *In re Wansborough* v. *Dyer*, 2 Chit. Rep. 40. As to reference by an executor or administrator, on the same principle, *vide ante*, p. 656.

Power of assignees of insolvents to sue in their own names;

[The present Insolvent Act, 1 & 2 Vict. c. 110, s. 41, re-enacting the 7 Geo. 4, c. 57, s. 24, provides, "That it shall and may be lawful for the assignee or assignees of any such prisoner, and such assignee or assignees is and are hereby empowered, to sue from time to time as there may be occasion, in his or their own name or names, for the recovery, obtaining, and enforcing of any estate, effects, or rights of such prisoner; but in trust for the benefit of the creditors of such prisoner, according to the provisions of this act; and to give such discharge or discharges to any person or persons who shall be respectively indebted to such prisoner, as may be requisite: and to make compositions with any debtors or accountants to such prisoner, where the same shall appear necessary; and to take such reasonable part of any such debts as can upon such composition be gotten in full discharge of such debts and accounts; *and to submit to arbitration any difference or dispute* between such assignee or assignees, and any person or persons, for or on account or by reason of any matter, cause, or thing relating to the estate and effects of such prisoner: Provided nevertheless, that no such composition, *or submission to arbitration*, shall be made, nor any suit in equity be commenced by any such assignee or assignees, without the *consent in writing* of the *major part in value of the creditors* of such prisoner, who shall meet together pursuant to a notice of such meeting, to be published at least fourteen days before such meeting in the *London Gazette*, and also in some newspaper most usually circulated in the neighbourhood of the place where such prisoner had his or her last usual residence before his or her

to make composition for debts;

to submit differences to arbitration;

but not to compound, submit to arbitration, nor commence suit in equity, without consent of creditors and the Court.

imprisonment as aforesaid, nor without the approbation of the said Court, or of one of the commissioners thereof." The provision requiring the consent of the creditors is for their benefit alone, and the defendant, in an action or suit by the assignees, cannot object that the creditors' consent had not been obtained: *Casborne* v. *Barsham*, 6 Sim. 317, *ante*, p. 660.]

WHO MAY REFER.

[J. Where a partnership firm enters into an agreement to refer to a third person, all the partners should execute it; for a submission to arbitration not being a transaction in the ordinary course of business, an individual partner has not the power of binding the firm. *Stead* v. *Salt*, 10 J. B. Moore, 389; S. C. 3 Bing. 101. [See *Boyd* v. *Emmerson*, 4 Nev. & M. 99; 2 Ad. & El. 184: *Adams* v. *Bankart*, 1 Cr., M., & R. 681: *Beckham* v. *Knight*, 5 Scott, 636, 638.] But in several cases, a deed executed by one partner in the presence and with the privity of the others, has been held to be binding on them. *Vide post*, POWER OF ATTORNEY: and see *Burn* v. *Burn*, 3 Ves. 578.J.] [Those partners who execute the submission, are of course bound. *Strangford* v. *Green*, 2 Mod. 228.]

Partners not bound by agreement to refer.

An appeal at sessions against a poor rate may, with the consent of the parties interested, be referred by the justices to arbitration. *Rex* v. *Justices of Northampton*, Caldecott, 30; 1 Gwill. Bac. Abr. 203. [But that can only be for the purposes of information upon facts. The validity of a poor rate cannot be determined by arbitration. *Thorp* v. *Cole*, 2 Cr., M., & R. 376; 1 Mee. & W. 531.]

Poor rate appeal may be referred to arbitration.

Revocation of Submission.]—[Since the stat. 3 & 4 Will. 4, c. 2, s. 39, (stated *ante*, p. 641), the authority of an arbitrator appointed by rule of Court, or order of a Judge, or order of *Nisi Prius*, or by submission containing an agreement that the same may be made a rule of Court, is not revocable *by any party* to such reference without leave of the Court or a Judge, (see *Bright* v. *Durnell*, 4 D. P. C. 756; where it was held, that a reference to two persons who were to choose an umpire before entering upon the reference, was not within the act), but remained subject to revocation by death or marriage of either party. As to the nature of the reasons which will induce the Court to permit a revocation of the submission, see *James* v. *Attwood*, 7 Scott, 841. A Judge cannot make an order under the act for the revocation of an arbitrator's authority, on an *ex parte* application. *Clarke* v. *Stocken*, 3 Scott, 90. The Court cannot allow a revocation after the award has been made. *Phipps* v. *Ingram*, 3 D. P. C. 669.]

REVOCATION OF SUBMISSION.

Stat. 3 & 4 Will. 4, c. 2.

[J. Where after an order of reference in a suit the arbitrators die,

Effect of death of arbitrator.

REVOCATION OF SUBMISSION.

or decline to proceed, the suit is not determined, but may be prosecuted as if no reference had been made. *Crawshay* v. *Collins*, 3 Swanst. 90: see *Dalby* v. *Cheslyn*, 2 You. & C. 170; *ante*, p. 637.

Death of parties revokes authority of arbitration.

The death of either of the parties is a revocation of the arbitrator's authority, and an award afterwards made is therefore void. *Toussaint* v. *Hartop*, 7 Taunt. 571: *Potts* v. *Ward*, 1 Marsh. 366: *Blundell* v. *Brettargh*, 17 Ves. 232: *Cooper* v. *Johnson*, 2 Barn. & Ald. 394: *Edmunds* v. *Cox*, 2 Chit. 432; [3 Doug. 406: *Orphan Board* v. *Van Reenen*, 1 Knapp, 100: *Rhodes* v. *Haigh*, 3 Dowl. & Ry. 610; 2 B. & Cr. 346. As to the effect of the death of a party after the award where no verdict has been taken, see *Maffey* v. *Godwin*, 1 Nev. & M. 101; and *infra*, tit. AWARD.] But it is now clear that this effect may be prevented by express stipulation.[J.]

What expressions make submission binding on the representatives of a deceased party.

[J.In the case of *Macdougall* v. *Robertson*, 1 Moo. & Pay. 156; 2 You. & J. 11; the deed of reference provided, "That the submission should not vacate or expire through the decease or insolvency of either of the parties, but should notwithstanding such event be proceeded in, and the matters in issue determined in the same manner as if such event had not occurred;" and it was held, that the award made after the death of one of the parties was binding; See also *Dowse* v. *Coxe*, 10 J. B. Moore, 272, where a clause of a similar effect was inserted in an order of reference in Chancery, and received a similar construction. *Biddle* v. *Dowse*, 6 B. & Cr. 255; 9 Dowl. & Ry. 404: *Smith* v. *Fielder*, 3 Moo. & Sc. 853. And where an order of reference at *Nisi Prius* empowered the arbitrator to determine all matters in difference between the parties, so as the arbitrator should publish it ready to be delivered to the parties, *or if either of them should be dead before the making of the award, then to their personal representatives* before a certain day; it was held, that this amounted to a declaration that the authority of the arbitrators should not be determined by the death of the parties. *Clarke* v. *Crofts*, 12 Moore, 149; 4 Bing. 143: [*Wrightson* v. *Bywater*, 3 Mee. & W. 199.] But the circumstance of each party covenanting for himself, his *heirs*, &c. to perform the award, does not make it binding on his representatives, if not made in the lifetime of the parties. And therefore, where in a contract for resale of lands, the vendor covenanted with the purchaser, his heirs, executors, and administrators, that he, his heirs, executors, administrators, and assigns, would convey at a price to be fixed by certain arbitrators, and the vendor died before the award was made, it was held that the contract could not be enforced against his devisees. *Blundell* v. *Brettargh*, 17 Ves. 232. It seems that where an order

REVOCATION OF SUBMISSION.

of reference gives an arbitrator power to make his award after the death of any of the parties, he may, under a general authority to enlarge the time for making his award, enlarge the time after the death. *Tyler* v. *Jones*, 3 Barn. & Cr. 144; 4 Dowl. & Ry. 740. In the case of *Edmunds* v. *Cox*, 2 Chit. 432, 3 Doug. 406, the Court seems to have thought that an award simply directing the payment of a sum of money to the survivors of several parties, one of whom had died pending the reference, would have been good the cause of action being joint, but was void in this instance, because the payment was to be made to, and releases given by, the surviving parties, *and the executors of the deceased party*, who were strangers to the reference.[J.] [See, as to the effect of a revocation by act of one of several parties on the same side, *White* v. *Gifford*, Vin. Abr. *Authoritie* (J): *Biddell* v. *Dowse*, 9 Dowl. & Ry. 404: *Wrightson* v. *Bywater*, 3 Mee. & W. 199.]

Effect of death of parties.

[The marriage of a *feme* party to a submission by deed or simple contract, is a revocation of the arbitrators' authority. *Anon.* Sir. W. Jones, 388: *Saccum* v. *Norton*, 2 Keb. 865; 3 Keb. 745: *Charnley* v. *Winstanley*, 5 East, 266: see *Andrews* v. *Palmer*, 4 B. & Al. 250, 253: *March* v. *Wood*, 9 B. & Cr. 659; 4 Man. & Ry. 504. Bankruptcy is not necessarily a revocation of the arbitrator's authority; see *Andrews* v. *Palmer*, 4 B. & Al. 250: *Snook* v. *Hellyer*, 2 Chitt. 43: *ex parte Kemshead*, 1 Rose, 149: *Haswell* v. *Thorogood*, 7 B. & Cr. 705: *March* v. *Wood*, 4 Man. & Ry. 504; 9 B. & Cr. 659: *Taylor* v. *Shuttleworth*, 8 Scott, 565: nor is insolvency, *Hobbs* v. *Ferrars*, 8 D. P. C. 779. See *Rex* v. *Bingham*, 2 Tyrw. 46. In *March* v. *Wood*, the assignees of the bankrupt were held not to be bound by an award made in pursuance of or submission by the bankrupt; but it would be otherwise if they were to attend the reference without objecting. *Dodd* v. *Herring*, 3 Sim. 133; 1 Russ. & M. 153. However, as the assignees, in the regular course of their duty, could not themselves refer to arbitration without the consent of the creditors (*ante*, p. 659), it is not easy to see how they could be held to have adopted a reference which was not originally binding on them. On the other hand, since the stat. 3 & 4 Will. 4, c. 42, there seems to be ground to contend that a reference which the bankrupt could not revoke, should bind his assignees, at any rate, where the other parties to the submission had no notice of any act of bankruptcy. See stat. 2 & 3 Vict. c. 29, stated *ante*, Vol. 1, p. 113.]

Revocation by marriage of feme.

Bankruptcy and insolvency.

[Where the submission limited no time for making the award, it would formerly have been restrained to a reasonable time; and if,

Where the submission limits no time, the

REVOCATION OF SUBMISSION.

award must be made within a reasonable time.

in such a case, either of the parties requested the arbitrators to make an award within a reasonable time, and after such request they neglected or refused to do it, the party might revoke the authority given to the arbitrators, and it was no breach of the submission. *Newgate* v. *Degelder*, 2 Keb. 10, 20; *S. C.* Sid. 415, pl. 16. *Curtis* v. *Potts*, 3 Mau. & Selw. 147. What shall be a reasonable time, the Court is to determine. Com. Dig. *Temps*, (D). The same doctrine was applicable where the arbitrators had power to enlarge the time for making their award, to an unlimited period; now, however, in cases coming within the stat. 3 & 4 Will. 4, c. 42, s. 39, the only course where the arbitrator is guilty of unreasonable delay, is to apply to the Court.]

Revocation is a breach of contract.

[In cases where there is no stipulation that the submission shall be made a rule of Court, the act of revocation is a breach of the bond or agreement of submission, and may be the subject of an action. *Vynior's case*, 8 Rep. 162: *Warburton* v. *Storr*, 6 Dowl. & Ry. 213; 4 Barn. & Cr. 103: *Brown* v. *Tanner*, M'Clel. & You. 46: and see *Marsh* v. *Bulteel*, 5 Barn. & Al. 507: *Grazebrook* v. *Davis*, 8 Dowl. & Ry. 295; 5 B. & Cr. 534. And upon the same principle, the marriage of a *feme sole*, which also operates as a revocation, is a breach of such a bond or covenant: *Charnley* v. *Winstanley*, 5 East, 266; but bankruptcy does not seem to be a revocation. *Andrews* v. *Palmer*, 4 Barn. & Ald. 250. Where the submission has been made a rule of a Court of Equity, the revocation of the arbitrator's authority is a contempt of Court. See *Harcourt* v. *Ramsbottom*, 1 Jac. & W. 511: *Haggett* v. *Welsh*, 1 Sim. 134. And when there is no agreement to make the submission a rule of Court, if either party revokes it without reasonable grounds for doing so, a Court of Equity will not restrain the other party from acting on the award. *Pope* v. *Lord Duncannon*, 9 Sim. 177. See *Smith* v. *Fielder*, 3 Moo. & Sc. 853.]

UMPIRE.

Distinction between umpire and third arbitrator.

[There is a distinction between an umpire, and a *third arbitrator* to be appointed by the arbitrators originally named. The former need not, unless it is required by the terms of the submission, be appointed before the arbitrators enter upon the reference; the latter is an essential part of the tribunal, and must be appointed before any other act (even enlargement of the time for making the award) is done. *Reade* v. *Dutton*, 2 Mee. & W. 69. See *In re Hick*, 8 Taunt. 694: *Lawrence* v. *Hodgson*, 1 You. & J. 16: *Cudliffe* v. *Walters*, 2 M. & Rob. 232.]

Arbitrators may, within time limited for making their award,

UMPIRE.

At what time arbitrators may appoint an umpire.

choose an umpire to make an umpirage, after the time for their award is determined. *Jennings* v. *Vandeputt*, Cro. Car. 263. *Watson* v. *Clement*, 1 Roll. Abr. 262, 2 pl. 5; Wms. n. 2 Saund. 133 (7). In the case of *Fyall* v. *Varier*, 1 Roll. Abr. 261, pl. 3, it is held, that if there be a submission to arbitrators, with this clause, "that if they do not end it within ten days, they shall nominate another that shall end it within ten days," and they do not agree within ten days, upon which they appoint another, who mak es an award within ten days, the umpirage is good; because it is the appointment of the parties, and their special agreement; and by making the umpire, the authority of the arbitrator determines. [And the rule was laid down by Lord *Ellenborough*, C. J., in the case of *Harding* v. *Watts*, 15 East, 556:—"It is very convenient for arbitrators to begin by appointing an umpire, because they are more likely to agree upon a proper choice of one before they themselves begin to quarrel; but if the parties have not expressly restrained them from making the choice after the time for making their own award expires, there is nothing to restrain them in reason and sense from choosing the umpire at any time while he has power to act. Such a choice is collateral to the power which they themselves have of awarding between the parties. They may choose the umpire either before or after the time for making their own award expires, provided it be within the time given to the umpire." That the arbitrators may appoint an umpire in the first instance, see also *Bates* v. *Cooke*, 9 B. & Cr. 407.]

If arbitrators chose an umpire before the time allowed for their award was expired, it was formerly holden, that such nomination was *ipso facto* void, though they absolutely resolved not to make any award themselves. *Reynolds* v. *Gray*, 1 Salk. 70; 12 Mod. 120; 1 Ld. Raym. 222. It was also the opinion formerly, that the power of the arbitrators was not determined by the election of an umpire within the time limited to themselves, unless they absolutely refused to make any award; and even in that case, the umpirage, made within the time, was void: for though the arbitrators might choose an umpire at any time during the continuance of their power, yet the umpire could not act until the time for the arbitrators was expired, but the arbitrators might still have made an award. *Donovan* v. *Mascal*, 1 Lev. 302; Sir T. Raym. 205; 1 Mod. 274. But the law seems [is clearly settled] now to be otherwise. As where in debt on bond, with a condition to perform the award of A. and B., so as they made their award on or before the 29th of June, and if they made no award, then to perform the umpirage of him whom A. and B. should elect

UMPIRE.

&c.; upon *nul agard* pleaded, the plaintiff replied, that A. and B. on the 29th of June elected C. to be umpire, and that he had made his umpirage, &c., and assigned a breach, &c. And upon demurrer, exception was taken that A. and B. had all the 29th of June to make their award; but it was overruled; for *per Holt*, C. J.—"If a submission be made to A. and B. so as they make their award *before Midsummer;* and if they do not agree, then to such umpire as they should choose, so as he makes his umpirage *before Midsummer*, and an umpirage is made accordingly, it is good; because the arbitrators determined their power before, by electing an umpire. And so it was resolved in the case of *Traverse* v. *Twisleton*, 1 Lev. 174; 2 Keb. 15. Lord Chief Justice *Holt* held, that if an umpire be named in the submission, he cannot make his umpirage before the time is expired which is given to the arbitrators to make their award. *Mitchell* v. *Harris*, 1 Ld. Raym. 671; 12 Mod. 512; 1 Salk. 71, 72. But that case appears to be now overruled by *Smailes* v. *Wright*, 3 Maule & S. 559, where two persons submitted by bond to the arbitration of two others named as arbitrators, and a third as umpire, so as the award be made by the arbitrators on or before a certain day; but if the said arbitrators do not by the time aforesaid make their award, then the bond shall not be avoided, provided the umpire make his award on or before a subsequent day. The arbitrators made no award, having finally, before the day limited for making their award, disagreed, and declared that they did not intend to make any award; whereupon afterwards, and two days before the time of the arbitrators expired, the umpire made his umpirage. And upon a rule *nisi*, for setting aside the umpirage, upon the ground that the umpire had no authority to make it until after the day limited to the arbitrators had expired, and the case of *Mitchell* v. *Harris* being cited in support of the objection, Lord *Ellenborough* said—"If the arbitrators had chosen to resume their authority within the time, and had made their award, it might have been said that here was a conflict of authorities; but they renounced their power, and also announced that they never meant to resume it, and they kept their word. They might have had the full time if they had agreed; but are we to put such a construction upon this submission, as that, if they finally disagreed before the time, the rest should be so much waste time? If they finally disagreed and determined their power, why should not the umpire proceed? It does not appear to me that any inconvenience could result from it, and it saved a waste of time. The thing has been done by an umpire of the parties' own choosing, and after a full renunciation of their power by the arbitrators. I

Umpirage when to be made.

UMPIRE.

therefore think, that what has been done is within the authority originally intended to be given to the umpire; his umpirage was only defeasible, in the event of the arbitrators making their award within due time." Mr. Justice *Le Blanc* added—"The submission gave the arbitrators so much time, provided they agreed and went on to make their award; but if they failed to make any award, then to the umpire. When, therefore, they finally disagreed, the umpire might proceed; still his umpirage might have become nugatory, if within the time the arbitrators had made their award." So where the submission was "so as the award be made by the arbitrators on or before the 21st of May, and if not made before that day, then to stand to the award of an umpire," &c., the arbitrators made no award, but chose an umpire on the 20th of May, who awarded that the defendant should pay to the plaintiff £40 before the 11th day of June following; it was objected, that they had no power to choose an umpire on the 20th of May, because the arbitrators themselves had power till the end of the 21st of May to make their award: but the objection was disallowed; for the arbitrators not having made any award, the award of the umpire was good, and judgment for the plaintiff. *Elliot* v. *Cheval*, 1 Lutw. 541, 544. So where in debt upon bond, for the performance of the award of J. S. and J. N. so as to make it on or before the 1st day of July, and if not, then to the umpirage of J. D., so as he made it on or before the 2nd day of July. The arbitrators made no award, but J. D. made his umpirage *on the first of July;* and upon demurrer it was objected that it was made before the time allotted by the submission; because the arbitrators had the whole day, namely the first of July, to make their award, and this umpirage was made on the first day; and the case of *Barnard* v. *King* was cited: but it was adjudged that the umpirage was good, for the parties had expressly given to the umpire the first day for executing his authority; and the Court did not think the reason of the resolution of the case cited to be of any force, namely, that the Court would be in confusion to adjudge which should be good, in case the arbitrators and the umpire had made several awards; for the award of the arbitrators, if they had made any, would be adjudged good; but if they had not, then the umpirage should bind, and there would be no confusion upon concurrence of authority as to the time, for the umpire had not an absolute, but only a conditional concurrence, namely, if the arbitrators make no award within the time; and they thought the case in Roll. Abr. was not good law. *Case* v. *Dare*, Sir T. Jones. 167, 168; 2 Show. 164.

UMPIRE.

So where there was a submission to two, and in case they disagreed, to the umpirage of a third person; so that the arbitrators made their award on or before a day certain; and the umpire, if they should differ, before a subsequent day: the umpire made his award before the time given to the arbitrators had expired; and it was held, that the umpirage need not state that the arbitrators had disagreed. *Sprigens* v. *Nash*, 5 Mau. & S. 193. And in *Roe* v. *Doe*, 2 T. R. 644, 645, it was objected, that the two arbitrators, who had the power of naming an umpire, had named one before they had entered into the examination of the subject at all: but the Court said that there was not any ground for the objection; for it rather seemed to be the fairest way of choosing an umpire. And they said that it had been solemnly determined in that Court about thirty years before, that arbitrators might elect an umpire the instant they began to take the matter into consideration. [*Doyley* v. *Pitslow*, 15 East, 557, n.] See also *Cowell* v. *Waller*, 2 Barnard. 154. And it seems to be now settled, that arbitrators cannot proceed on a reference, after they have once named an umpire; for then their authority ceases, though the time for making the award is not expired. *Danes* v. *Monsey*, Rep. Prac. C. B. 116; 3 Vin. Abr. 97, *Arbitrament*, pl. 18, *S. C.* Hence it seems to follow that the umpire may make his umpirage before the time which is allowed the arbitrators to make their award is expired, notwithstanding what is said by Lord *Holt* in the before-cited case of *Mitchell* v. *Harris*, 1 Ld. Raym. 671. [It is now settled, however, that the arbitrators, when they are not restrained by the terms of their authority, may appoint an umpire at any time before the time appointed for the award to be made by such umpire, and that their doing so does not affect their power of making an award, independently of the umpire. If they do not disagree at all, the umpire has no power: if they disagree and refer the matter to the umpire, they may, notwithstanding, make an award at any time within the limits of their authority, unless anticipated by the umpire, who, as soon as his authority commences by the disagreement of the arbitrators, may make his award, whether the time limited to them has expired or not; and the rule is the same whether the umpire was named in the reference or appointed by the referees. *Sprigens* v. *Nash*, 5 Mau. & S. 193: *Smailes* v. *Wright*, 3 Mau. & S. 559: *Cudliffe* v. *Walters*, 2 M. & Rob. 232.]

Arbitrators may name umpire before they commence the examination of the subject.

Whether, when the arbitrators have named an umpire, their authority ceases.

If the bond be that if the arbitrators do not make their award by the day named,

Where the submission was, "So that the two arbitrators should make their award before or on the 21st day of June; but if no award should be made before or on that day, then that the parties should observe the award of an umpire to be chosen by the arbi-

trators, so as such umpirage should be made before the 28th of June." The arbitrators met, and did not make their award, nor choose an umpire, before or on the 21st of June; but they appointed an umpire before the 28th of June, and the umpire, before the 28th of June, made his award. It was contended, that the umpire was not chosen in due time; that the arbitrators on the 21st of June were *functi officio*, and could not afterwards appoint an effective umpire; or if they could, they could only do it instantly at the expiration of that day, and not at any indefinite time between that day and the 28th. But the Court said, "Before or upon the 21st day of June, until the last moment of that day, the arbitrators have power to agree in award: if they do not in the course of that day agree in award, then they have power to appoint an umpire; but until they fail to make their award on the 21st day of June, the power to appoint an umpire does not begin." *Beck* v. *Sargent*, 4 Taunt. 232. This case seems to be founded entirely on the peculiar wording of the submission, and does not appear to impugn the previous cases, in which it has been held, that the arbitrators may appoint an umpire, either before or after they commence the examination of the subject. [The *dictum* (of *Mansfield*, C. J.) in *Beck* v. *Sargent*, if it is to be taken as laying down a general rule, is clearly erroneous; see the cases cited, *supra*.]

UMPIRE.

then to abide the award of an umpire to be chosen by the arbitrators; the time to appoint an umpire commences when the time for making the award expires.

So where arbitrators, having chosen an umpire according to their power, afterwards joined with him in making his award, it was held notwithstanding to be a good one; for in law it is the umpirage of the *umpire only*, who was at liberty to take what advice, or opinion, or assistance he pleased. *Soulsay* v. *Hodgson*, 3 Burr. 1474; 1 Wm. Black. 463: [*Bates* v. *Cooke*, 9 Br. & Cr. 407]: it is no more than if mere strangers had joined in the award, which could not vitiate. *Beck* v. *Sargent*, 4 Taunt. 232. And if the arbitrators hear all the evidence, and afterwards disagree, and state the evidence to the umpire, on which he makes his award *without re-examining the witnesses*, it is good, unless he is required to examine them before he makes his award. *Hall* v. *Lawrence*, 4 T. R. 589. So if an arbitrator makes his award without examining the witnesses *on oath*, that is no objection to the validity of the award, unless it be made at the time of their examination. *Ridout* v. *Pye*, 1 Bos. & P. 91.

The arbitrators joining with the umpire in making his award, does not invalidate it.

Umpire may decide on the arbitrators' report of evidence to the umpire.

There is some doubt whether arbitrators, having named an unpire, who refuses to act, can afterwards appoint another. Thus it was adjudged in the Common Pleas, by three Judges,

The better opinion seems to be, that if the umpire elected

UMPIRE.

refuses, the arbitrators may elect another, *toties quoties.*

against the opinion of the Chief Justice *Pollexfen,* that where a submission was to two arbitrators, and if they make no award, then to the umpirage of such person as they should choose, and they chose one, who refused, and then they chose another, such nomination was a good one; for their power was not so determined by the election of the first umpire, that upon his refusal they could not appoint another: and the first nomination being void by his refusal, was the same thing as if they had never chosen an umpire at all. *Trippet* v. *Eyre,* 3 Lev. 263; 5 Mod. 457; 2 Vent. 113; 1 Show. 76. But in a subsequent case it was said by Chief Justice *Holt,* that if arbitrators have authority to choose an umpire, and they choose one accordingly, they have executed their authority, and cannot make another election, though the umpire does not accept of the umpirage; but it is otherwise if they elect upon express condition that he does accept it; for then he is no umpire unless he accepts it: but Justice *Rokesby* doubted whether an express condition would make a difference, because the words "if the party elected will accept it," seem to be implied in the election. *Reynolds* v. *Gray,* 1 Salk. 70; 1 Ld. Raym. 222; 12 Mod. 120. But the better opinion seems to be that if the umpire elected refuses, the arbitrators may elect another, *toties quoties.* Com. Dig. *Arbitrament* (F). Wms. n. 2 Saund. 133 *a.* See also Kyd on Awards, 91—94, 2nd Edit. [But if the umpire once accept the office, his subsequent refusal will not remit the arbitrators to their power. *Oliver* v. *Collings,* 11 East, 369.]

[In the case of *Harding* v. *Watts,* 15 East, 556, it was objected to the authority of an umpire, that the arbitrators before appointing him, had refused to appoint any umpire, and thereby had renounced their authority, and were *functi officio;* but *Bayley,* J., observed that the refusal was confined to a period on or before the 1st of March, and their power extended to the 25th, before which it was executed. It seems, too, that a power of appointing an umpire, being a power simply collateral, cannot be destroyed in any other way than by exercising it. *Vide infra,* Vol. 5, p. 161].

Improper mode of choosing an umpire sometimes a ground for setting aside award.

An improper mode of choosing an umpire sometimes forms a ground for setting aside the award. Thus if two arbitrators toss up which of them shall nominate the third, this will vitiate the appointment. *Harris* v. *Mitchell,* 2 Vern. 485: *Hewitt* v. *Penny,* Sayer, 99: *Wells* v. *Cook,* 2 Barn. & Al. 218: *Young* v. *Miller,* 5 Dowl. & Ry. 263; 3 Barn. & Cr. 407. But where the parties named two arbitrators, who were to choose a third, and the award

UMPIRE.

was to be made by the three, or any two of them, and each of the arbitrators proposed to the other a third, *who was admitted by the other to be a fit person;* but not being able to agree which of the two proposed should be selected, they agreed to decide the choice by lot; it was held that this was within their authority, and that an award made by such third arbitrator, in conjunction with the one by whom he had been originally proposed, could not be impeached on that account. *Neale* v. *Ledger*, 16 East, 51. In this case it will be perceived, as each arbitrator admitted the fitness of the person proposed by the other, such person might be considered as the nominee of *both.* [In *Young* v. *Miller* the Court distinguished the case of *Neale* v. *Ledger*, observing that in the case before them the agreement to toss up preceded the nomination of the two persons out of whom the choice was to be made, so that each of the arbitrators had precluded himself from the opportunity of objecting to the person nominated by the other. *Neale* v. *Ledger*, was, however, distinctly overruled in *In re Cassell*, 4 Man. & Ry. 555; B. & Cr. 624, where a reference was made to two arbitrators and to such third person as they should appoint, the award to be made by any two of the three, the two each named two persons, and the selection of the third arbitrator from the four persons named was determined by lot. The choice was held bad; and Lord *Tenterden*, C. J., in delivering the judgment of the Court, said, "We think it better not to decide the present case upon any nice ground of resemblance to a difference from the others, which might lead to discussion and litigation in other cases; but to lay it down as a general rule that the appointment of the third person must be the act of the will and judgment of the two; must be matter of choice and not of chance, unless the parties consent to, or acquiesce in, some other mode." And this principle was fully recognised in *Ford* v. *Jones*, 3 B. & Ad. 248, where an appointment under the same circumstances as those in *Neale* v. *Ledger* was held bad. The assent of the parties concerned was insisted upon; but it does not appear distinctly from the report what evidence of such assent was given, or whether it was complete. See 4 Ad. & El. 946. As to that, *Littledale*, J., said, "It is alleged here that the parties themselves, at a meeting with the arbitrators, assented to the proceeding by lot, but such assent must always be a matter of doubt."]

[It is settled, however, that an umpire may be well chosen by lot, if all the parties to the reference assent to such a proceeding, the assent amounting in effect to a new submission. *Vide ante*,

UMPIRE.

p. 645 (*a*). This was decided in *In re Tunno & Bird*, 2 Nev. & M. 328; 5 B. & Ad. 488, where the evidence of assent was conclusive. Attending an umpire who has been improperly appointed, does not bind the parties unless they are fully aware of the mode in which he has been appointed. *Wells* v. *Cooke*, 2 B. & Ald. 218: *In re Greenwood*, 1 Per. & D. 463; 9 Ad. & El. 699. Thus, if either party (or his attorney) knows that the umpire had been chosen by lot, but does not know that one of the arbitrators objected to him, he is not bound by acquiescence. *Re Jameson*, 4 Ad. & El. 945. It may be doubted, from what fell from the Court in that case, whether the attorney of either party has authority to assent to a mode of proceeding which *primâ facie* is improper. The assent of the attorney's clerk is clearly insufficient. *In re Hodson*, 7 D. P. C. 569.]

The *whole* case must be referred to an umpire.

It seems, that where arbitrators have a special power to choose an umpire, they must refer the *whole* matter to him, and the submission of a particular point only is bad. Thus where the arbitration bonds were conditioned for the performance of the award of the arbitrators, or of the umpirage of such person as the arbitrators should jointly choose between the parties, and the arbitrators agreed upon several matters, but not being able to agree upon one point, they referred that point to an umpire, the award was held to be bad, as the umpire should have gone into the whole case, and the arbitrators had in effect chosen an umpire between *themselves*, and not between "the parties." *Tollit* v. *Saunders*, 9 Pri. 612. And see *Middleton* v. *Weeks*, 1 Roll. Abr. 256, pl. 27: *Bradford* v. *Bryan*, Willes. 268; 7 Mod. 349.

(*a*) [But it may be questioned whether, in case the original submission is made by specialty and the assent by parol, an action could be brought upon the specialty for non-performance of the award of an umpire so appointed. For it seems clear, that as such an umpire would not be appointed in pursuance of the original submission, he could not derive his authority from it, but only from the subsequent parol agreement. *Vide ante*, p. 646.]

ARBITRATION.

PRECEDENTS.

1. AFFIDAVIT *of the* DUE EXECUTION *of the* SUBMISSION *in order to its being made a* RULE OF COURT.

1. AFFIDAVIT OF EXECUTING SUBMISSION.

IN THE QUEEN'S BENCH, (*or* COMMON PLEAS, *or* EXCHEQUER OF PLEAS).

Affidavit of execution of bond.

WITNESS, of &c., maketh oath and saith, *That* on the —— day of ——, this deponent was present at and did then see the signing and sealing of the (*a*) bond or obligation hereunto annexed: *And* that [*obligor*], of &c., esquire, therein mentioned, did then duly sign, seal, and as his act and deed deliver the said (*a*) bond or obligation in the presence of this deponent: *And* that the name [*obligor*], set and subscribed to the said (*a*) bond or obligation, is of the proper handwriting of the said [*obligor*]: *And* that the name [*witness*], set and subscribed as the witness thereto, is of the proper handwriting of this deponent.

SWORN &c., (*ut ante*, p. 458). [*Witness*].

(*a*) If the submission be by deed, say, "deed or writing."

2. AGREEMENT TO REFER DISPUTES TO ONE ARBITRATOR.

2. AGREEMENT *on a Purchase* (*a*), *between the Vendor, his Son and Grandson, and the Purchaser, to refer to* ONE ARBITRATOR *all Disputes existing or which may arise before the last Ten Days preceding the Arbitrator's first Sitting.*

ARTICLES OF AGREEMENT indented and made &c., the —— day of ——, BETWEEN [*vendor*], of &c., of the first part; [*son*], of &c., son of the said [*vendor*], of the second part; [*grandson*], of &c., son of the said [*son*], of the third part; and [*purchaser*], of &c., of the fourth part.

Recital of agreement. That disputes existed between the parties relating to the premises.

WHEREAS by an agreement, dated &c., (*recite agreement for purchase,* &c.) AND WHEREAS several disputes and differences exist between the said [*vendor*] and [*son*] respectively, and the said [*purchaser*]; and between the said [*son*] and [*grandson*] respectively, and the said [*purchaser*]; respecting the said several agreements, and otherwise relating to the premises.

Testatum.

NOW THESE PRESENTS WITNESS, that it is hereby covenanted and agreed, by and between the said several parties hereto, *That* all disputes (*b*) and differ-

Agreement that

Reference to preceding forms, concerning arbitration.

(*a*) See *Agreement* between the vendors and purchaser of an estate in fee-simple, to refer the question whether certain lands were included in the contract, and what compensation the vendor should receive in consequence of part of the premises being leasehold instead of freehold, *ante*, Vol. 1, p. 526:—

That equivalent for trifling errors in a contract for purchase shall be referred, in case of disagrement, Vol. 1, p. 540;

Trusts, to transfer to a purchaser so much stock as tithes and lands shall be valued at by two mutual arbitrators, or their umpire, with the purchaser's expenses in consequence of not having the title completed, Vol. 1, p. 520.

Agreement, on purchase of timber, to refer disputes, Vol. 1, p. 581; on partition, Vol. 1, pp. 592, 595, 602, 608, 613, 617; on exchange, p. 629; on agreement to erect buildings, p. 647; to build a bridge, 701; to build a ship, p. 704; in an *Agreement* between manufacturers and a factor, p. 661.

Agreement to refer disputed boundaries, Vol. 1, p. 582.

See further INDEX TO THE PRECEDENTS, title ARBITRATION.

(*b*) In cases of this kind it is better to make the reference general, as above.

ences which existed between the said parties respectively, or any of them; and also all other disputes and differences that may, at any time or times, before the last ten days immediately preceding the day which shall be appointed by the arbitrator hereinafter named, for his first sitting in the arbitration to be made in pursuance of these presents, exist between the same parties, or any of them, or any matters and things relating to, or arising out of the said several agreements, or any of them, shall be referred to the arbitration of [*arbitrator*]: And the award of the said [*arbitrator*], if made in writing under his hand and seal, ready to be delivered to the parties hereto, or their respective heirs, executors, or administrators, on or before the —— day of —— next, or on or before such other day, not beyond the —— day of ——, as the said arbitrator shall by writing under his hand from time to time appoint, shall be binding and conclusive on all the said parties, and their heirs, executors, and administrators: And that this reference or submission shall be made a rule of her Majesty's Court of Queen's Bench at Westminster, at the instance of any of the said parties hereto, or their or his executors or administrators (*c*). And further, that the said parties hereto, and each of them, or their or his heirs, executors, or administrators, will or shall produce and shew forth to the said arbitrator, all such deeds, evidences, and writings, relative to the premises in question, as shall be in the possession or power of them or him respectively, or of any other person or persons under their or his influence or control, So as the said arbitrator may examine and inspect or peruse the same, for the purpose of enabling him to make the said award: And will or shall, so far as in them or him respectively lies, furnish the said arbitrator with such other proofs and documents, and do all such other acts and things, for better enabling him to make the said award, as the said arbitrator shall require: And that the said arbitrator shall, for the purpose of enabling him to make the said award, be at liberty to go into parol as well as written evidence; and to examine the said parties in difference, or any of them, and such other witnesses as he shall think proper, on oath: And that the solicitor of each of the said parties shall state in

2. AGREEMENT TO REFER DISPUTES TO ONE ARBITRATOR.

existing disputes, and all other disputes which may arise before the last ten days preceding the arbitrator's first sitting, shall be referred to him.

Award, if made before a certain day, or before an enlarged limited time, to be binding.

Reference to be made a rule of Court.

Parties to produce to arbitrator all deeds, &c.

and furnish other proofs, &c.

Arbitrator may go into parol as well as writ-

(*c*) [The submission may, if it is thought fit, be made a rule of a Court of equity, *ante*, p. 641. But an agreement for that purpose does not, it seems, make the submission irrevocable, *ante*, p. 643.]

2. AGREEMENT TO REFER DISPUTES TO ONE ARBITRATOR.

writing all the matters and things intended to be referred by his client to the said arbitrator, and shall, at least ten days before the day appointed by the said arbitrator for his first sitting on the said arbitration, deliver a copy of such statement to the solicitor of each of the said other parties respectively; and only those matters and things which shall be comprehended in such respective statements shall be taken into consideration by the said arbitrator. AND that the said arbitrator shall give at least —— days' previous notice to the solicitor of each of the said parties, of the day on which he intends to hold his first sitting on the said arbitration: AND that all costs and charges attending the said arbitration shall be in the discretion of the said arbitrator, and shall be paid and satisfied pursuant to his award. AND LASTLY, that neither of the said parties, his heirs, executors, or administrators, will or shall bring any action or suit against the other of them, in relation to the premises, or against the arbitrator (*d*). IN WITNESS &c.

ten evidence; and to examine parties and witnesses.

The solicitor of each party to state in writing all matters intended to be referred, and ten days before the first sitting to deliver a copy to the solicitor of each of the other parties.

Arbitrator to give notice of his first sitting.

Costs to be in the discretion of the arbitrator.

Neither of the parties to bring any action or suit against the other.

(*d*) When the reference is by mutual covenants or agreements, it seems generally prudent to have a *nomine pœnæ*. See the form, Vol. 1, p. 602.

3. AGREEMENT TO REFER MATTERS OF ACCOUNT TO THREE, AND TO SUSPEND ACTIONS AND SUITS.

3. AGREEMENT *to refer to* THREE ARBITRATORS *Matters of Account between a Creditor and Two Debtors, where the Dealings were between the Creditor and one of the Debtors to a certain Time, and then between the Creditor and both Debtors; and where a Balance is admitted to be due; Agreement to suspend an Action, and a Bill and Cross Bill in Equity.*

Title of bill. IN THE EXCHEQUER.

Between { [*A. B.*] and [*C. D.*] Plaintiffs, and [*E. F.*] . . . . . Defendant,

Title of cross bill.

Between { the above-named [*E. F.*] Plaintiff, and the above-named [*A. B.*] and [*C. D.*] Defendants.

Recital of dealings between

WHEREAS there have been divers dealings and transactions between the above-named [*E. F.*] and [*A. B.*], before

3. AGREEMENT TO REFER MATTERS OF ACCOUNT TO THREE, AND TO SUSPEND ACTIONS AND SUITS.

and since the —— day of ——, on which there was due and owing from the said [*A. B.*] to the said [*E. F.*], the sum of £——; and there have been also divers dealings and transactions between the said [*E. F.*] and the said [*A. B.*] and [*C. D.*], since the said —— day of ——; and several questions, disputes, and controversies have arisen, and are subsisting, not only between the said [*E. F.*] and [*A. B.*], but also between the said [*E. F.*] and the said [*A. B.*] and [*C. D.*]: *And* there is now depending an action at law, wherein the said [*E. F.*] is plaintiff, and the said [*A. B.*] and [*C. D.*] are defendants; and two suits are also depending in her Majesty's Court of Exchequer at Westminster, in one of which the said [*A. B.*] and [*C. D.*] are plaintiffs, and the said [*E. F.*] is defendant; and in the other of the said suits the said [*E. F.*] is plaintiff, and the said [*A. B.*] and [*C. D.*] are defendants, touching the said dealings and transactions, and the accounts relating thereto. NOW IT IS HEREBY MUTUALLY AGREED by, between, and among the said [*E. F.*], [*A. B.*], and [*C. D.*], to refer all questions, disputes, and controversies, in anywise relating to, or touching, or concerning such dealings or transactions, as well between the said [*E. F.*] and the said [*A. B.*], as between the said [*E. F.*] and the said [*A. B.*] and [*C. D.*], and the accounts relating thereto, to the award, order, arbitration, end, and determination of [*three arbitrators*], of &c. *And it is agreed,* that notwithstanding the bond for £——, in the pleadings mentioned, the said arbitrators are to be at liberty to investigate the whole of the accounts, dealings, and transactions between the said parties, and to award a greater or less sum to be due from the said [*A. B.*] and [*C. D.*], or either of them, jointly or separately, to the said [*E. F.*], on the day of the date of the said bond, and to determine the true balance or balances between the said parties, upon the whole of the accounts, dealings, and transactions, between the said parties; *And* to appoint how and in what proportions such balances shall be paid, and by and to whom: *And* also to direct the said action to be discontinued, and the said suits to be dismissed, with or without costs; but if with costs, then to ascertain whether such costs are to be paid as between attorney and client, or as between party and party; and when, and by and to whom to be paid. AND *the said parties, for themselves, their heirs, executors, and administrators, do hereby severally and respectively agree* well and truly to

one of the parties and the other, to a certain time; and dealings between one of the parties and the two others, from that time; disputes, action and two suits.

Testatum.

Agreement to refer.

Notwithstanding bond, arbitrators may investigate the accounts, and award a greater or less sum;

appoint how balances shall be paid;

direct action to be discontinued and suit dismissed, with or without costs.

Agreement to perform award,

3. AGREEMENT TO REFER MATTERS OF ACCOUNT TO THREE, AND TO SUSPEND ACTIONS AND SUITS.

obey and perform the award of the said arbitrators, or any two of them, touching and concerning the several matters hereinbefore particularly mentioned, as well as all other actions, causes of action, suits, specialties, executions, extents, accounts, controversies, trespasses, claims, and demands whatsoever, at law and in equity, or otherwise, between or among the said parties up to the date hereof; *So* as not to question the balance before stated to be due from the said [*A. B.*] to the said [*E. F.*], on the —— day of ——; *And so* as the said award be made in writing, under the hands of the said arbitrators, or any two of them, and ready to be delivered to the said parties, or their respective executors or administrators, or such of them respectively as shall desire the same, on or before the —— day of —— next ensuing. AND that the said arbitrators, or any of them, shall have power to examine the parties, and their witnesses, on oath or affirmation, and call for books and papers in the possession or power of either of the parties; which are to be produced on oath or affirmation; and to take the depositions of the parties and their witnesses in writing, which are to be signed by them respectively, or otherwise not to be admitted as evidence: AND that each of the said parties shall in the meantime be at liberty to inspect, peruse, and have copies of all or any of the books, papers, and writings in the hands, custody, or power of the other or others of them the said parties respectively, touching or relating to the matters in reference: AND if either party shall, in the opinion of the arbitrators, or the majority of them, without good and sufficient cause, to be ascertained on oath or affirmation, if required, to their satisfaction, by non-attendance, or non-production of books, papers, or writings, or otherwise delay or impede, or attempt to delay or impede, the progress of the said arbitrators, in making their said award, the arbitrators, or the majority of them, shall be at liberty to proceed *ex parte*, after two days' clear notice to the party or parties causing such delay or impediment as aforesaid, to be left at his or their dwelling-house or counting-house: AND if the arbitrators, or the majority of them, shall think it necessary, they shall be at liberty, and are hereby authorized, to appoint an accountant to their assistance; the expense of such accountant to be paid, one half by the said [*E. F.*], and the other half by the said [*A. B.*] and [*C. D.*]; such accountant to be required to make his solemn declaration, according to the statute, of

so as not to question the balance stated to be due to one of the parties;

and so as the award be made by a certain day.

Arbitrators may examine parties, &c. on oath; and call for books and papers.

Each party to be at liberty to inspect books, &c. in the custody of the others.

If either of the parties should delay or impede the arbitrators, they may proceed *ex parte*, after notice.

Arbitrators may employ an accountant.

3. AGREEMENT TO REFER MATTERS OF ACCOUNT TO THREE, AND TO SUSPEND ACTIONS AND SUITS.

the truth of the account or statement to be made out by him. AND *it is agreed*, that all proceedings at law or in equity shall be stayed until the —— day of —— next, when, if no award shall be made, or the time for making the same shall not be enlarged by mutual consent, each of the parties shall be at liberty to proceed at law or in equity, as they or either of them shall be advised, or can or may do according to the course of the courts, and the injunction obtained by the said [*A. B.*] and [*C. D.*] shall have its full effect, till the same shall be dissolved; but this agreement shall not prevent any legal proceedings that may become necessary to recover the bills hereinafter mentioned (*a*). AND *it is agreed*, that the submission hereby made shall not be defeated or affected by the death of the said parties, or any of them, pending the same; but shall or may be proceeded in, and the matters in difference determined, in the same manner as if the award of the said arbitrators had been made and delivered in the lifetime of the party or parties so dying; and the executor or administrator, executors or administrators, of the party or parties so dying shall be, and be deemed and considered to be, to all intents and purposes, a party or parties to the reference or submission hereby made; any rule of law or equity to the contrary notwithstanding. *And it is agreed*, that the expenses of the arbitration and award shall be paid, one half by the said [*E. F.*] and the other half by the said [*A. B.*] and [*C. D.*]. AND the said [*A. B.*] and [*C. D.*] do hereby agree, immediately after this submission shall be made a rule of her Majesty's Court of Exchequer, to pay to the said [*E. F.*] the sum of £—— in part of the debt admitted to be due to the said [*E. F.*], such payment to be made in bills of exchange which have been inspected and approved by the said [*E. F.*]. AND the said [*E. F.*] doth hereby agree, that if no award shall be made within the time above mentioned, or such extended time as shall by all parties be agreed upon, he the said [*E. F.*], his executors or administrators, will or shall, within one week after the expiration of the time for making such award, pay into the hands of the proper officer

Proceedings to be stayed until the day on which the award is to be made;

but not to prevent any legal proceedings to recover the bills after-mentioned.

Expenses of arbitration.

Death of either of the parties not to affect the reference.

The two partners, after submission is made a rule of Court, to pay to the other party a sum in part of debt admitted in bills of exchange.

If no award, the other party to pay sum received into Exchequer; power for attornies to sue.

(*a*) If it be the agreement, that in case of the death of either of the arbitrators before the award, the party appointing him shall have power to appoint another in his stead, see the form, Vol. 1, pp. 533, 619. And see *Harper* v. *Abrahams*, 4 Moore, 3.

Power to appoint new arbitrators in case of death before award.

3. AGREEMENT TO REFER MATTERS OF ACCOUNT TO THREE, AND TO SUSPEND ACTIONS AND SUITS.

of the said Court of Exchequer the said sum of £——, or such part thereof as shall have come to his hands, or to the hands of any person for his use, and will or shall deliver up such of the said bills as shall be then unpaid into the hands of [*attornies*], attornies, who shall be and are hereby authorized to recover the payment of the same from all persons liable thereto, and who shall pay the same into the hands of the said officer of the said Court. AND *it is agreed* that the said sum of £——, or so much thereof as shall be so paid into the said Court, shall be subject to the order or determination of the said Court; AND the said [*E. F.*], [*A. B.*], and [*C. D.*], do hereby agree to pay to the said [*attornies*], and to indemnify them against all costs, charges, and expenses to be occasioned by the recovering or endeavouring to recover and receive the said bills. AND *it is agreed*, that this submission shall be made a rule of her Majesty's Court of Exchequer at Westminster. IN WITNESS &c.

Money paid into Court to be subject to order of Court.

Indemnity to attornies.

Submission to be made a rule of Court.

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4. APPOINTMENT OF UMPIRE.

4. APPOINTMENT *of an* UMPIRE *by Arbitrators.*

WE, the within-named [*arbitrators*], do hereby nominate and appoint [*umpire*], of &c., to be the umpire between us (*a*) in the matters within referred, *On condition* (*b*) that he do, within —— days from the date hereof, by some writing under his hand, accept the umpirage (*c*), as witness our hands, &c. (*d*).

(*a*) If it be to assist the arbitrators (see *Still* v. *Halford*, 4 Camp. 17), say,

THIRD ARBITRATOR.

"To assist us in" &c.

(*b*) This is prudent, *vide ante*, p. 669.

(*c*) If the consent of the parties be requisite, add,

"*And* we the said [*parties*] do hereby consent thereto."

Stamp.

(*d*) No stamp is necessary; *Routledge* v. *Thornton*, 4 Taunt. 704; and if the appointment is under hand and seal, it will require no stamp, unless it is made a deed by delivery. *Wilson* v. *Smee*, Kyd on Awards, Add. vii. 2nd Ed.: *Dodd* v. *Herbert*, Sty. 459: Sheph. Touch. 57: *Brown* v. *Vawser*, 4 East, 584. But to prevent doubt, the appointment is usually made under hand only.

5. APPOINTMENT *of a* JOINT ARBITRATOR, *by Two Arbitrators.*

5. APPOINTMENT OF JOINT ARBITRATOR.

WE [*arbitrators*], the arbitrators within-named, by this memorandum in writing under our hands, made before entering upon the within-mentioned arbitration, do hereby nominate and appoint [*third arbitrator*], of &c., the third arbitrator, to whom, together with ourselves, the within-mentioned matters shall be referred, according to the tenor and effect of the within rule (*or* within-written bond or obligation, *or* indenture), *On condition* that he do, within —— days from the date hereof, by some writing under his hand, consent to act therein accordingly. IN WITNESS &c.

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6. BOND *of* ARBITRATION *from One to One* (*a*), *in the common Form.*

6. BOND, ONE TO ONE.

KNOW ALL MEN (*obligation, ut ante*, p. 173).

Common obligation from one to one.

THE CONDITION of the above-written bond or obligation is such, *That* if the above-bounden [*obligor*], his heirs, executors, and administrators, on his and their part and behalf, should in all things well and truly obey, abide by, and perform the award, order, arbitrament, judgment, and final determination of [*two arbitrators*], of &c. (*b*), arbitra-

A general condition of a common arbitration bond.

(*a*) See forms if obligation be from one to two, jointly and severally, *vide post*, p. 683; from one to two, as tenants in common, *ante*, p. 181; one to two or more, as joint tenants, p. 191; jointly and severally from two to one, p. 178; three to one, p. 188; five to one *post*, p. 688: some of which forms may be necessary under peculiar circumstances, such as references by partners among themselves, or with others. *Vide ante*, p. 649.

Reference to different forms of obligations.

(*b*) If there be three arbitrators, which it is prudent to appoint in the first instance, as it prevents the necessity of having an umpire, say, "or any two of them, which arbitrators are indifferently" &c., *ut supra*.

THREE ARBITRATORS.

6. BOND, ONE TO ONE.

tors indifferently elected and named, as well on the part and behalf of the above-bounden [*obligor*], as of the above-named [*obligee*], to award, order, arbitrate, judge, and determine of and concerning all actions, causes of action, suits, bills, bonds, specialties, judgments, executions, extents, controversies, trespasses, damages, claims, and demands whatsoever, at law and in equity, or otherwise howsoever, which at any time or times heretofore have been had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed, or depending by and between the said parties; *So as* the said award be made in writing, under the hands of the said [*arbitrators*] (*c*), and ready to be delivered to the said parties in difference, or their respective executors or administrators, or to such of them respectively as shall desire the same, on or before the —— day of —— next (*d*), *Then* the

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(*c*) "or any two of them,"

ENLARGED TIME.

(*d*) If the arbitrators are to extend the time, say,

"or, on or before such other day, not beyond the —— day of ——, as the said arbitrators (*or* any two of them) shall, by writing under their hands, from time to time appoint."

UMPIRE.

If there be only two, or an equal number of arbitrators appointed, and on their disagreement an umpire is to be appointed, say,

"*And* in case the said arbitrators should not make such their award of and concerning the premises within the time limited as aforesaid, if the above-bounden [*obligor*], his heirs, executors, and administrators, on his and their part and behalf, should in all things well and truly obey, abide by, and perform the award, order, umpirage, judgment, and final determination of *[*umpire*], of &c., being a person indifferently named and chosen by the said parties, for umpire in and concerning the premises; *So as* the said umpire do make and set down his award and umpirage in writing under his hand, and ready to be delivered to the said parties in difference, or their respective executors or administrators, or to such of them respectively as shall desire the same, on or before the —— day of —— next,—*Then*," &c.

ARBITRATORS TO NAME UMPIRE.

* If the arbitrators are to name the umpire, say,

"of such third person as they the said arbitrators shall by writing under their hands indifferently nominate, elect, and appoint as umpire, in and concerning" &c.

above-written bond or obligation shall be void, and of no effect. *And* the said [*obligor and obligee*] do hereby agree that this submission shall or may be made an order or rule of her Majesty's Court of Queen's Bench at Westminster, at the instance of either of the said [*obligee and obligor*], his executors or administrators. *And* that the said arbitrators (and umpire) shall for the purpose of enabling them (*or* him) to make the said award (*or* umpirage), be at liberty to go into parol as well as written evidence; and to examine the said parties in difference, or either (*or* any or one) of them, and such other witnesses as they or he shall think proper, on oath. (*If it be the case add*) *And* that nothing herein contained shall extend to dissolve an injunction obtained by the said [*obligor*] in her Majesty's High Court of Chancery, restraining the said [*obligee*] from proceeding at law against the said [*obligor*], touching the matters in the said injunction mentioned or referred to: *But* the said arbitrators (*or* umpire) shall be at liberty to order the said injunction to be dissolved, if they (*or* he) should think proper (*e*).

6. BOND, ONE TO ONE.

Rule of Court.

Arbitrators to receive parol o written evidence, and examine on oath.

Reference not to dissolve an injunction.

But arbitrators to be at liberty to dissolve it.

SIGNED, SEALED, AND DELIVERED in the presence of }

(*e*) Stamp, one pound fifteen shillings, 55 Geo. III, c. 184, Sched. part i, tit. BOND.

Stamp.

An agreement stamp is not necessary to an arbitration bond, containing, besides the usual covenants, an agreement as to payment of costs. *In re Wansborough* v. *Dyer*, 2 Chit. 40.

As to the propriety of a warrant of attorney to confess judgment, *vide post*, p. 701.

WARRANT OF ATTORNEY.

7. BOND *from One to Two jointly and severally to abide by the Award of Three Arbitrators, or any Two of them, or of their Umpire.*

7. BOND, ONE TO TWO, TO ABIDE THE AWARD OF THREE, OR TWO OF THEM, OR THEIR UMPIRE.

KNOW ALL MEN BY THESE PRESENTS, That I [*obligor*], of &c., am held and firmly bound to [*obligee*], of &c., and [*other obligee*], of &c., jointly and severally in the sum of [*double the probable amount of the matter in controversy*], of lawful British money; to be paid to the said [*obligee*] and [*other obligee*], or either of them,

Obligation, one to two jointly and severally.

7. BOND, ONE TO TWO, TO ABIDE THE AWARD OF THREE, OR TWO OF THEM, OR THEIR UMPIRE.

or the certain attorney, executors, administrators, or assigns, of them or either of them: *For* which payment to be well and truly made, I bind myself, my heirs, executors, and administrators, firmly by these presents; *Sealed* with my seal: DATED &c.

Condition of arbitrationbond to abide by award of three arbitrators, or any two of them;

THE CONDITION of the above-written bond or obligation is such, *That* if the above-bounden [*obligor*], his heirs, executors, and administrators, should on his and their part and behalf, in all things well and truly obey, abide by, and perform the award, order, and determination of [*three arbitrators*], of &c., arbitrators indifferently named, on the parts of the said [*obligor*] and [*obligees*], to arbitrate, award, order, and determine of and concerning all and all manner of actions, causes of action, quarrels, controversies, trespasses, damages, and demands whatsoever, at any time or times heretofore had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed, or depending, by or between the said [*obligor*] and [*obligees*], or any or one of them, or of such two of the said arbitrators as shall consent to accept and take upon themselves the making of such award (in case any of them should refuse or decline to make the same); *So as* the said award be made by the said [*three arbitrators*], or such two of them as shall so agree to make the same as aforesaid, on or before the —— day of ——, now next ensuing (*a*); *But* in case the said arbitrators, or some two of them (if they should all take upon themselves the making of the said award), should not agree in their award, *Then*, if the above-bounden [*obligor*], his heirs, executors, and administrators, should on his and their part and behalf in all things well and truly obey, abide by, and perform the award, order, and determination of such person as shall be nominated and chosen by the said [*arbitrators*], or by such two of them as shall consent and agree to take upon themselves the said arbitration between the said parties, of and concerning the premises; *So as* such umpire, so to be chosen as aforesaid, do make his award, order, and determination of and concerning the premises, on or before the —— day of —— next; *The* above-written bond or obligation shall be

or of their umpire.

ENLARGED TIME.

(*a*) If the arbitrators are to extend the time, *vide ante*, p. 682.

void and of no effect; And the said [*obligor and obligees*] (*b*) do hereby agree, that this submission shall be made a rule of her Majesty's Court of Queen's Bench at Westminster; *And* that this submission shall not be revoked by the death of the said [*obligor*] and [*obligees*], or either of them, before the making of the said award. In witness &c.

7. BOND, ONE TO TWO, TO ABIDE THE AWARD TO THREE, OR TWO OF THEM, OR THEIR UMPIRE.

Agreement by obligor, that his submission shall be made a rule of Court.

(*b*) [The agreement must be mutual to bring the case within the stat. 3 & 4 Will. 4, c. 42, s. 39, *ante*, p. 641.]

8. BOND *from One to One, to abide by the Award of Two Arbitrators; or of the Two Arbitrators and a Third Person, to be chosen by them, or of any Two of them; to produce all Deeds, &c.; Suit in Chancery to be dismissed; Obligee's Costs in the Suit to be settled by the Arbitrators, as between Attorney and Client, and if they think fit, a Compensation for his Loss of Time and Expenses in endeavouring to sell certain Bonds; Accounts in respect of the Consideration given by the Obligee to the Obligor for a post obit Bond to be opened; Purchase not to be impeached, but only the Errors rectified; all Costs to be in the Arbitrator's discretion; Power to enlarge the Time.*

8. BOND, ONE TO ONE, ON SUBMISSION TO TWO, OR TO THEM AND THEIR NOMINEE, OR ANY TWO OF THEM.

KNOW ALL MEN, &c. (*obligation, ut ante*, p. 173).

Obligation one to one.

WHEREAS differences have arisen, and are subsisting between the above-bounden [*obligor*] and the above-named [*obligee*], and a suit is now pending in the High Court of Chancery wherein the said [*obligor*] is the plaintiff, and the said [*obligee*] is the defendant; and there are divers accounts now subsisting and unsettled between them the said [*obligor*] and [*obligee*]. And whereas it has been agreed, that immediately upon the execution of the above-written bond of obligation, the said suit in Chancery shall be no further prosecuted or proceeded in, but shall be dismissed out of the said court; and that the said parties shall take all proper steps in order to procure the same to be so dismissed. And

Recital of disputes;

a Chancery suit, and unsettled accounts between the parties.

Agreement to dismiss bill on execution of bond;

8. BOND, ONE TO ONE, ON SUBMISSION TO TWO, OR TO THEM AND THEIR NOMINEE, OR ANY TWO OF THEM.

that all such differences and disputes as aforesaid, and all such unsettled accounts as aforesaid, shall be referred to the hearing, arbitrament, and determination of [*two arbitrators*], of &c. *And* in case the said [*arbitrators*] should take upon themselves such arbitration, but should not agree in making an award, then the said [*arbitrators*] shall mutually choose some third person to join with them in hearing and determining the said matters in dispute. NOW THE CONDITION of the above-written bond or obligation is such, that if the said [*obligor*], his heirs, executors, and administrators, should on his and their part and behalf in all things observe and perform the award, order, and determination, which shall be made by the said [*arbitrators*], of and concerning all and all manner of actions, suits, causes of action and suit, quarrels, controversies, trespasses, accounts, damages, claims, and demands whatsoever, at any time or times heretofore brought, commenced, sued and prosecuted, done, suffered, committed, or depending by or between them the said [*obligor*] and [*obligee*], or in anywise relating thereto; *But so as* such award, order, or determination, be made in writing, under the hands of the said [*arbitrators*], and ready to be delivered to the said [*obligor*], his executors or administrators, (in case he or they should request the same), on or before the —— day of —— next ensuing the day of the date of the above-written bond or obligation: OR in case the said [*arbitrators*] should not agree in their award, then if the said [*obligor*], his heirs, executors, and administrators, should, on his and their part and behalf, in all things well and truly observe and perform the award, order, and determination of the said [*two arbitrators*], and of such third person so to be chosen as aforesaid, or of any two of them; *But so as* such last-mentioned award, order, or determination, be made in writing, under the hands and seals of the parties making the same, and ready to be delivered to the said [*obligor*], his executors or administrators, (in case he or they should request the same), on or before the —— day of —— next ensuing the day of the date of the said bond or obligation; AND ALSO if the said [*obligor*], his executors or administrators, should produce, or cause to be produced to the said arbitrators, all deeds, papers, evidences, and writings concerning, or in anywise relating to the said matters in dispute, or any of them, which are or shall be in his or their custody or power, or which he or they can or may be able to

Agreement to refer to two arbitrators.

Condition to abide by award of two arbitrators;

or of the two arbitrators and a third person to be chosen by them or of any two of them;

and to produce to arbitrators all deeds and writings relating to the matters in dispute.

8. BOND, ONE TO ONE, ON SUBMISSION TO TWO, OR TO THEM AND THEIR NOMINEE, OR ANY TWO OF THEM.

obtain or come by, without suit at law or in equity, and leave the same with the said arbitrators for their perusal, inspection, and examination, *Then* the above-written bond or obligation to be void and of no effect; or else to remain, continue, and be in full force and virtue. AND the said [*obligor and obligee*] do hereby agree, that this submission shall be made a rule of her Majesty's Court of Queen's Bench at Westminster; AND that the costs, charges, and expenses which the said [*obligee*] hath been put to or sustained by reason of the said suit in Chancery, shall be settled and adjusted by the said arbitrators, as between attorney and client: AND that it shall be at the discretion of the said arbitrators, or any two of them, to make such compensation to the said [*obligee*] as they shall think fit, for his loss of time and expenses in attempting to effect a sale of six several bonds or obligations given by —— esquire, to the said [*obligor*], and of all the said bonds, bearing date respectively &c. AND that the accounts between them, out of which the consideration of £—— was given by the said [*obligee*] to the said [*obligor*], for the purchase of a post obit bond of £——, entered into by the said [*obligor*] to the said [*obligee*], shall be opened and gone into, but the purchase of the said bond shall not be impeached or invalidated, but merely if any errors should appear on either side in the said accounts, the same shall be rectified, and the balance increased or decreased, as shall appear to be just and equitable to the said arbitrators, or any two of them. AND that it shall be lawful for the said arbitrators, or any two of them, to proceed ex parte with the said arbitration, in case of the non-attendance of either of them the said [*obligor*] and [*obligee*], or his executors or administrators, after —— days' previous notice in writing being given to him or them for that purpose, or left at his or their last or usual place or places of abode. AND that the said arbitrators, or any two of them, shall have power, if they think fit, to examine upon oath the said [*obligor*] and [*obligee*], or either of them, or their or his executors or administrators, and all witnesses, or any witness, who shall or may attend the said arbitrators. AND that the costs and charges of the said arbitrators, and of the submission to arbitration hereby entered into, and of the award of the said arbitrators, or any two of them, and also the costs of the said suit in Chancery, shall be borne and paid by the said [*obligor*] and [*obligee*], in such proportions or in

Submission to be made a rule of court;

obligee's costs in Chancery suit to be settled by arbitrators, as between attorney and client;

and if they think fit, a compensation for his loss of time and expenses in endeavouring to sell certain bonds;

accounts out of which the consideration for a post obit bond arose to be opened by the arbitrators;

purchase not to be impeached, but errors, if any, to be rectified;

arbitrators to proceed ex parte in case of the non-attendance of either party after notice;

arbitrators, if they think fit, to examine parties and witnesses on oath:

costs of arbitrators, submission, and award, and of Chancery suit, to be borne as arbitrators shall think proper.

8. BOND, ONE TO ONE, ON SUBMISSION TO TWO, OR TO THEM AND THEIR NOMINEE, OR ANY TWO OF THEM.

such manner as the said arbitrators, or any two of them, shall in their discretion think proper. AND LASTLY, that it shall be lawful for the said arbitrators, or any two or more of them, by any writing or writings under their or his hands or hand, and indorsed upon these presents, from time to time to enlarge the time for making their award in the said matters in difference, but so as the period for enlarging the same do not exceed the —— day of ——. IN WITNESS whereof, the said [*obligor*] and [*obligee*] have hereunto set their hands and seals on the day of the date of the above-written bond or obligation.

Arbitrators may enlarge the time for making their award, until a given day.

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9. BOND, FIVE TO ONE, JOINTLY AND SEVERALLY, WITH JOINT SEVERANCES.

9. BOND *from Five to One, jointly and severally* (*a*), *to abide by the Award of Three Arbitrators, or any Two of them, concerning Claims under Three Wills.*

Obligation from five to one jointly and severally, with a joint severance of any four, three, or two of them.

KNOW ALL MEN BY THESE PRESENTS, *That* WE, [*J. H.*], of &c., [*J. M.*], of &c., claiming in right of his wife [*wife*], late [*maiden name*], spinster, [*J. S.*], of &c., claiming in right of his late wife [*C. S.*], formerly [*C. H.*], spinster, now deceased, and [*C. H.*], of &c, spinster, are held and firmly bound to [*T. H.*], of &c., in the sum of £—— of lawful British money, to be paid to the said [*T. H.*], or to his certain attorney, executors, administrators, or assigns; *For* which payment to be well and truly made, we (*b*) bind ourselves and each of

(*a*) [*Vide ante*, p. 649.]

(*b*) Either the above or the following form may be used, as they will both have the same effect; but as this form appears more definite, some gentlemen may prefer it.

Full form of obligation from five to one jointly, and any four, three, or two of them jointly, and each of them separately.

"We bind ourselves, our heirs, executors, and administrators jointly; *and* any four of us, separately and apart from the other of us, bind ourselves, our heirs, executors, and administrators jointly; *and* any three of us, separately and apart from the others of us, bind ourselves, our heirs, executors, and administrators jointly; *and* any two of us, separately and apart from the others of us, bind ourselves, our heirs,

us, and any four, three, or two of us, and the heirs, executors, and administrators of us, and each of us, and of any four, three, or two of us, jointly, severally, and respectively, firmly by these presents; *Sealed* with our seals: DATED &c.

9. BOND, FIVE TO ONE, JOINTLY AND SEVERALLY, WITH JOINT SEVERANCES.

WHEREAS differences have arisen between the above-bounden [*J. H.*], [*J. M.*], and [*wife*], his wife, [*J. S.*] and [*C. H.*], and the above-named [*T. H.*], as to their respective claims and interests under the respective wills of [*T. T.*], late of &c., deceased, [*G. H.*], late of &c., deceased, and [*J. H.*], late of &c., deceased; and they have agreed to submit the same to the arbitrament and final determination of [*three arbitrators*], of &c., and that their award, or the award of any two of them, shall be final and conclusive on all the said parties, their heirs, executors, and administrators. NOW THE CONDITION of the above-written bond or obligation is such, That if the above-bounden [*J. H.*], [*J. M.*], and [*wife*], his wife, [*J. S.*], and [*C. H.*], their executors and administrators respectively, should, on his, her, and their several and respective part and parts, in all things observe and perform the award, order, and determination of the said [*three arbitrators*], or of any two of them, arbitrators indifferently chosen, elected, and named, by and on the part as well of the above-bounden [*J. H.*], [*J. M.*], and [*wife*], his wife, [*J. S.*], and [*C. H.*], as of the above-named [*T. H.*],

Recital of dispute as to claims under three wills;

and agreement to refer.

Condition to abide by the award of three arbitrators, or any two of them, concerning the five obligors' claims under the three wills, or any of them.

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executors, and administrators jointly; *and* each of us, separately and apart from the others of us, bindeth himself and herself, his and her heirs, executors, and administrators, severally, firmly," &c.

Unless there be such a severance or division of a joint and several obligation as in either of the above forms, the obligee cannot sue any four, three, or two of the obligors in the lifetime of the other or others of them, but he must sue them all, or each of them separately. *Vide ante*, p. 297, and Vol. 1, p. 688; and 1 Chitty on Pleading, 33, 3rd Ed. The power to sue jointly any number of the obligors in an arbitration bond, is peculiarly desirable; for if some of them should be willing to perform the award, unnecessary expenses would be incurred by an action against all of them, or by several separate actions against such of them as refused.

Without a severance of a joint and several bond, the obligee cannot sue two or more during the life of the others.

If the submission be by deed, where there are several covenantors, see the lien part of a covenant adapted to the above circumstances, *ante*, p. 299. The remedy under the bond or covenant, independently of the proceedings by attachment, is of considerable importance. *Vide infra*, tit. AWARD.

9. BOND, FIVE TO ONE, JOINTLY AND SEVERALLY, WITH JOINT SEVERANCES.

to arbitrate, award, and finally determine, concerning all and all manner of claim and claims, which they, or any, or one of them have, or pretend to have, by, from, or under the above-mentioned wills, or any one of them (*c*); *So* as the award of the said arbitrators, or of any two of them, be made in writing, under their hands and seals, or under the hands and seals of any two of them, ready to be delivered to the said parties in difference, or their respective heirs, executors, or administrators, on or before the —— day of —— next; *Unless* they the said arbitrators, or some or one of them, should be prevented from so doing by sickness or some other unavoidable event: *And then so as* the award of the said arbitrators, or any two of them, be made in writing under their hands and seals, ready to be delivered to the said parties in difference, or their respective heirs, executors, or administrators, within the time or space of two calendar months from the said —— day of —— next, *Then* the above-written bond or obligation to be void, but otherwise to be and remain in full force and virtue. AND *it is hereby agreed* between all the said parties in difference, that these presents, and the submission hereby made, shall be made a rule of her Majesty's Court of Queen's Bench at Westminster. IN WITNESS whereof the said [*obligors*] and [*obligee*] have &c.

so as the award be made by a given day.

In case of illness, &c., award be made within two months afterwards.

Submission to be made a rule of Court.

A general reference seems prudent.

(*c*) Perhaps in cases of this nature, it is better to make a general reference, *ut ante*, pp. 682, 684, 686; or at least, to make it also general, *ut post*, p. 697.

10. BOND, ON SUBMISSION TO ASCERTAIN SHARES CAPTURED SHIP AND CARGO SHOULD BEAR OF RANSOM.

10. BOND *from the Master of a Ship to a Merchant, who exported a Cargo in the Ship, to abide by the Award of Two Arbitrators, as to the Value of the Ship and Cargo respectively, in order to ascertain the Proportions each should pay of a Ransom to be given by the Master, to the Captain of a French Privateer, who had captured the Ship.*

Recital of freight.

KNOW ALL MEN, &c. (*obligation, ut ante*, p. 173).

WHEREAS the above-bounden [*obligor*] did in the

10. BOND, ON SUBMISSION TO ASCERTAIN SHARES CAPTURED SHIP AND CARGO SHOULD BEAR OF RANSOM.

month of ——, receive on board the ship called the [*Thetis*], whereof he was master, at Hull, a cargo of barley, the property of the above-named [*obligee*], to be transported from Hull aforesaid to Hamburgh, and there to be delivered. AND WHEREAS the said [*obligor*] shortly afterwards sailed, and being on his passage taken by a French privateer (*a*), capture; he agreed with the captain thereof for the ransom of the said ship and cargo for £——, and delivered one of his ransom. servants to the said captain as an hostage for securing the hostage. due payment thereof. AND WHEREAS the said ship and Valuation at Hamburgh. cargo, soon after her arrival at Hamburgh, were appraised by persons on that behalf nominated, to the intent that the respective values thereof might be ascertained, and that both might rateably and proportionably, according to their values, bear a just part of the said £——. AND WHEREAS [*two insurers*], of &c., having insured to the said [*obligee*] several sums of money upon the said cargo, for the voyage above described, they and the said [*obligee*] have insisted, that the aforesaid appraisement of the said ship was partially or injudiciously made; and on that account differences as to the Differences. proportion which the said ship and cargo ought respectively to contribute towards payment of the said ransom, have arisen between the said parties: for adjustment whereof, the said [*obligor*] and [*obligee*] have agreed to submit the same to the determination of the persons hereinafter for that purpose named: *And* the said [*obligee*] hath undertaken that such determination shall be binding and conclusive to the said insurers, as to any claim or demand which they or either of them have or may have upon the said [*obligor*], by reason of the premises. THEREFORE THE CONDITION of this obligation is such, that if the said [*obligor*], Agreement to refer. his executors and administrators, should on his and their part perform and keep the award and determination of [*two arbitrators*], of &c., arbitrators indifferently named, as well on the part of the said [*obligor*], as of the said [*obligee*], to arbitrate, award, and determine of and concerning the premises; *So as* the said award be made in writing under the Condition to

(*a*) It is competent to arbitrators to inquire whether a ransom, for which the plaintiff seeks to be repaid, were justified by an extreme necessity within the statute 45 Geo. 3, c. 72, sect. 6, which enables a Court of Admiralty to allow such necessity. *Miller* v. *Robe*, 3 Taunt. 461. Arbitrators may inquire whether the ransom be justified by necessity, within 45 Geo. 3, c. 72.

10. BOND, ON SUBMISSION TO ASCERTAIN SHARES CAPTURED SHIP AND CARGO SHOULD BEAR OF RANSOM.

abide by the award of two arbitrators, &c.

hands and seals of the said arbitrators, and ready to be delivered to the said [*obligor*] and [*obligee*], or their respective executors or administrators, on or before the —— day of —— next ensuing the date hereof: AND in case the said arbitrators should not make such their award by the time last mentioned, then &c., [*submission to umpire, &c., ut ante,* p. 684; *or enlarged time, ut ante,* p. 690.]

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11. BOND, ON SUBMITTING BREACHES OF HUSBANDRY COVENANTS.

11. BOND *from One to One, on submitting to Three Arbitrators, or any Two of them, the Question, what Damages have been occasioned by reason of any Breaches of any of the Husbandry and other Covenants of a Lease, excepting in Cases in which he has acted by Permission of the Lessor; the Arbitrators to direct the future Course of Husbandry, and whether any, and what, Assurances shall be executed by the Parties: unlimited Power to enlarge Time* (*a*).

KNOW ALL MEN, &c. (*obligation, ut ante,* p. 173).

Recital of lease.

Recital that obligor had not followed the six years course of husbandry, he alleging that the lessor agreed to permit the four years course;

that heir admits such permission;

but alleges

WHEREAS (*recite lease and material covenants, and death of lessor, and descent of estate to his heir*). AND WHEREAS the said [*obligor*] hath not farmed or cultivated the said arable lands according to the course prescribed by the said covenant (and which is called the six years course of husbandry); the said [*lessor*] having in his lifetime, as he the said [*obligor*] alleges, agreed to dispense with the said covenant, and to permit the said [*obligor*] to farm the lands in the course of husbandry called the four years course. AND WHEREAS the said [*heir*] is willing to allow the said [*obligor*] the full benefit of the permission so given or alleged to have been given to him by the said [*lessor*] as aforesaid, up to the day of the date of these presents; but he alleges that the

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(*a*) See award and deed of covenants in pursuance of the above submission, *post,* tit. AWARD.

said [*obligor*] hath not farmed or cultivated the said lands according to the said course of husbandry called the four years course; and also that he hath done or omitted to do divers other acts and things, contrary to and in breach of the other covenants, conditions, and agreements, contained in the said indenture of lease; whereby the premises so demised to him as aforesaid have sustained great damage and injury. And whereas [*obligor*] and [*heir*] agreed that it shall be referred to [*arbitrators*], of &c., and to [*third arbitrator*], of &c., a person chosen and appointed by the said [*arbitrators*], or to any two of them, to settle and determine by their award, to be made as hereinafter mentioned, whether any and what damage has been occasioned to the farm and hereditaments comprised in the said indenture of lease, in consequence or by reason of the said [*obligor*] having, at any time or times since the —— day of ——, farmed or otherwise managed the same contrary to the said four years course of husbandry; or by reason or in consequence of the said [*obligor*] having since the time aforesaid committed any breach or breaches in otherwise acting contrary to any of the covenants, clauses, conditions, and agreements, in the said indenture of lease contained, *Except* a covenant to farm in the six years course hereinbefore recited; and except in all those cases in which it shall appear to the said arbitrators, or any two of them, that the said [*obligor*] hath acted pursuant to a permission given him by the said [*heir*], or by the said [*lessor*] deceased; *And also* what sum or sums of money (if any) shall be paid by the said [*obligor*] to the said [*heir*], as a compensation for such damages; and in what manner and at what time and place the same shall be paid: *And also*, in what order, course, and manner the said premises shall be farmed, managed, and carried on, during the remainder of the said term of twenty-one years; *And* whether any and what agreements or other assurances shall be made or executed by the said [*heir*] and [*obligor*], or either of them. NOW THE CONDITION of the above-written obligation is such, that if the said [*obligor*], his heirs, executors, administrators, and assigns, should for and on his and their parts, in all things, observe and perform the award and determination of the said [*arbitrators*], or any two of them, which they or any two of them shall make, of and concerning the several matters and things so agreed to be

11. BOND, ON SUBMITTING BREACHES OF HUSBANDRY COVENANTS.

obligor has not followed the four years course;

and has broken other covenants.

Agreement to refer

to two arbitrators, and a third appointed by them, or to any two of them;

to settle the sums to be paid for damages;

and to direct the future course of husbandry;

and what agreements shall be executed by heir and obligor.

Condition to abide by award of three, or any two of them;

11. BOND, ON SUBMITTING BREACHES OF HUSBANDRY COVENANTS.

referred to them, as aforesaid: *And also* should pay all such sum and sums of money, and make and execute such agreement or agreements or other assurances, in such manner and at such times as the said [*arbitrators*], or any two of them, shall by their said award order and direct; *So as* the said award or determination of the said [*arbitrators*], or any two of them, be made in writing under the hands of them or any two of them, ready to be delivered to the said parties, or their respective heirs, executors, or administrators, or such of them respectively as shall require the same, on or before the —— day of —— next (*b*), or on or before such other day as the said arbitrators, or any two of them, shall by writing under their hands from time to time appoint: *And also* if the said [*obligor*], his heirs, executors, or administrators, should, when thereunto requested by the said arbitrators, or any of them, and from time to time until such award or determination shall be made, bring and produce, or as he or they shall be requested, cause to be brought and produced before the said arbitrators, or any of them, all leases, agreements, deeds, papers, writings, vouchers, and evidences in his or their custody or power, relating to, or in anywise concerning the premises aforesaid, and the several matters and things so agreed to be referred as aforesaid, or any of them: *And also*, if the said [*obligor*], his executors or administrators, in the meantime, and until such award and determination shall be made as aforesaid, and from time to time when thereunto requested by the said arbitrators, or any of them, should personally appear before the said arbitrators, or any of them, or such person or persons, and at such place or places as they or any of them shall appoint; and then and there, on his or their oath or respective oaths, answer fully and truly to such interrogatories and questions as shall be demanded from him or them respec-

and to pay such sums, and execute such agreements as arbitrators shall award:

so as the award be made by a given time;

and on request of arbitrators, to produce to them leases, &c.

and to appear before arbitrators, be sworn, and answer questions.

Where the arbitrators have power under an agreement in the bond to enlarge the time for making their award, it seems requisite that performance of an award to be made during the extended period should form part of the condition.

(*b*) As the parties agree, that the arbitrators may enlarge the time for making their award, the above words seem requisite, in order that the non-performance of an award made during the extended period may be a breach of the condition. *Brown* v. *Goodman*, 3 T. R. 592; *et vide ante*, pp. 643, 646. For, although agreements are contained in the condition of the bond, yet it seems they are so far independent of it, that a non-performance of any of them would be no breach of the condition, but merely subject the party to an attachment on the rule of Court, or to an action on the agreement. See *Evans* v. *Thompson*, 5 East, 193.

tively, touching or concerning the several matters and things so agreed to be referred as aforesaid, *Then* the above mentioned bond or obligation shall be void and of no effect. AND *it is hereby mutually agreed*, that the said arbitrators, or any of them, shall have power to examine the parties and their witnesses on oath or affirmation: and to call for books, vouchers, and papers in the possession or power of either of the parties; which are to be produced on oath or affirmation: and to take the deposition of the parties and their witnesses in writing: which are to be signed by them respectively, or otherwise not to be admitted as evidence: *And* if they should think proper, from time to time, and at all convenient times, until the said award or determination shall be made, either by themselves, or by any person or persons to be appointed by them or any two of them for that purpose, to enter into and upon the messuage and hereditaments, and other premises comprised in the said indenture of lease, in order to see the state, condition, and usage thereof. AND *it is agreed*, that if either of the said parties, his heirs, executors, or administrators, should in the opinion of the said arbitrators, or any two of them, without good and sufficient cause, to be ascertained on oath or affirmation if required, to their satisfaction, by non-attendance, or non-production of books, papers or writings, or otherwise, delay or impede, or attempt to delay or impede the said arbitrators in making their said award, the said arbitrators, or any two of them, shall be at liberty to proceed ex parte, after two days' clear notice to the party or parties causing such delay or impediment as aforesaid, to be left at his or their usual dwelling or place of abode. AND *it is agreed* that the said arbitrators, or any two of them, shall be at liberty, by writing under their hand respectively, to enlarge the time for making the said award, when, and as often, and to such time or times, as they shall think fit: *And* that the costs and charges of this bond or obligation, and all costs, charges, and expenses of and attending, or incidental to the said arbitration and award, shall be borne and paid by the said [*obligor*] and [*heir*] jointly, or by either of them separately, as the said arbitrators, or any two of them, shall by their said award direct. AND *it is agreed*, that no suit or action, or other proceedings, shall or may be had, brought, or instituted against the said arbitrators, or any or either of them, for or by reason, or on account of any award to be

11. BOND, ON SUBMITTING BREACHES OF HUSBANDRY COVENANTS.

Arbitrators may examine the parties and their witnesses on oath;
call for books, &c.;
take depositions in writing;
and enter on demised lands, to see the condition thereof.

If either party impede making award, arbitrators to proceed ex parte after notice.

Arbitrators may enlarge the time for making their award to an unlimited period;
costs of reference to be subject to the award.

No suit or action shall be brought against arbitrators on account of any award.

11. BOND, ON SUBMITTING BREACHES OF HUSBANDRY COVENANTS.

made by them under this reference; but that this agreement shall and may be pleaded in bar to any such suit or action. AND *it is agreed*, that this submission shall or may be made a rule or order of her Majesty's Court of Queen's Bench, at Westminster, at the instance of either of the said parties to this reference.

Submission shall be made a rule of court.

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12. COVENANT BY SEVERAL TO REFER DISPUTES RESPECTING TESTATOR'S EFFECTS, &c.

12. COVENANT *by Executors and Legatees to abide by the Award of three Arbitrators, or any Two of them, respecting the Estate and Effects of the Testator, and other Matters; and adapted to the Circumstances of a* REFERENCE *by Partners, &c.,* IN PURSUANCE OF A COVENANT *in the Articles of Partnership, &c.*

Parties.

THIS INDENTURE, made &c., BETWEEN [*E. G.*], of &c., and [*J. A.*], of &c., executors of the last will and testament of [*testator*], late of &c., deceased, of the first part; [*P. M. G.*], one of the grandchildren of the said [*testator*], deceased, by his daughter, late the wife of the said [*E. G.*], now also deceased, of the second part; the said [*P. M. G.*], the said [*J. A.*], husband of [*E. A.*], the only surviving daughter of the said [*testator*], deceased, [*J. B.*] the younger, of &c., husband of [*L. G.*], granddaughter of the said [*testator*], deceased, [*E. G.*] the younger, of &c., [*Jos. G.*] of &c., [*John G.*], of &c., [*P. A.*], of &c., and [*S. A.*], of &c., all grandchildren of the said [*testator*], deceased, of the third part (*a*). WHEREAS some differences have arisen

Recital of dis-

REFERENCE IN PURSUANCE OF A COVENANT.

(*a*) If the submission be made by coparceners, &c., in pursuance of a covenant contained in the articles of copartnership, &c., say,

"WHEREAS by articles of copartnership bearing date &c., and made &c., amongst other things, *It was covenanted*, that in case any dispute or question should arise between the said parties relative to the construction of the said articles, or to all or any of the matters or things therein contained, the same should be referred to the arbitration of two indifferent persons, one to be named by each of the parties, with power for such arbitrators to appoint an umpire in case of their disagreement: *And* that the award of the said

12. COVENANT BY SEVERAL, TO REFER DISPUTES RESPECTING TESTATOR'S EFFECTS, &c.

and are depending between the said [*E. G.*] the elder and [*J. A.*], as executors as aforesaid, and the said [*P. M. G.*]; and also between the said executors and the said [*J. A.*] in right of his wife the said [*E. A.*], the said [*P. M. G.*], the said [*J. B.*] the younger, the said [*E. G.*] the younger, the said [*Jos. G.*], the said [*John G.*], the said [*P. A.*], and [*S. A.*], in their respective rights and qualities above mentioned, touching the estate and effects of the said [*testator*], deceased; and also touching several other matters and things (*b*): *And* in order to put an end to the said differences, the said parties have agreed to refer the same to the award and determination of [*three arbitrators*, of &c., or any two of them. NOW THIS INDENTURE WITNESSETH, that they the said [*E. G.*] the elder and [*J. A.*], as executors as aforesaid, and the said [*P. M. G.*], [*J. B.*] the younger, [*E. G.*] the younger, [*Jos. G.*], [*John G.*], [*P. A.*], and [*S. A.*], do, and each of them doth, each for himself and herself, severally and respectively, and for his and her several and respective heirs, executors, and administrators, covenant and agree with each other, his and her heirs, executors, and administrators respectively, to observe and perform the award and determination of the said [*three arbitrators*], or any two of them, of and concerning the premises aforesaid, or any thing in anywise relating thereto; *And also* of and concerning all actions, causes of action, suits, bills, bonds, specialties, covenants, contracts, promises, accounts, reckonings, sums of money, judgments, executions, extents, controversies, trespasses, damages, and demands whatsoever, both at law and in equity, at any time heretofore had, made, moved, brought, commenced, sued, prosecuted, committed, or depending by or between the said parties, or any of them; *So as* the said award of the said arbitrators, or of any two of them, be made in writing under

putes respecting the estate and effects of a testator, and other matters;

and agreement to refer.

Testatum.

Covenant by the parties severally to abide by the award.

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arbitrators or umpire should be final and conclusive. AND WHEREAS disputes have arisen between the said parties relating to their copartnership, (and also relating to several other matters and things), and they have in pursuance of the said covenant agreed to refer the same," &c. (*reference to two, with power to nominate a third to join with them, or an umpire, ut ante*, p. 684, 686).

Recital that disputes have arisen.

(*b*) *Vide ante*, p. 674, (*b*).

12. COVENANT BY SEVERAL, TO REFER DISPUTES RESPECTING TESTATOR'S EFFECTS, &c.

their hands, or under the hands of any two of them. *And it is also agreed,* that the submission hereby made of the said matters in controversy, shall be made a rule of her Majesty's Court of Queen's Bench at Westminster; to the end that the said parties respectively may be finally concluded by the said arbitration, pursuant to the statutes in that case made and provided. And the said parties do hereby further agree, that none of them will or shall prosecute any action or suit in any Court of law or equity, against the said arbitrators, any or either of them, or bring or prefer any bill in equity against each other concerning the premises, until the said award be made and delivered: Also, that all costs and charges attending the present arbitration shall be in the discretion of the said arbitrators, or any two of them, and be paid and satisfied pursuant to their award. And for the full performance of the award so to be made as aforesaid, the said parties bind themselves severally and respectively, their several and respective heirs, executors, and administrators, each to the other of them respectively, in the penal sum of £——, firmly by these presents (*c*). In witness &c. (*d*)

Agreement that submission shall be made a rule of court; that parties will not bring any action or suit against the arbitrators, nor each other, until the award be delivered; costs of arbitration to be paid pursuant to the award.

Nomine pœnæ.

(*c*) See an award in pursuance of the above submission, *post*, Vol. 3, title Award.

Stamp.

(*d*) Stamp, *one pound fifteen shillings*, 55 Geo. 3, c. 184. Schedule, part i, tit. Deed.

13. COVENANT BY SEVERAL, UNDER A PENALTY.

13. COVENANT *by Several with Two, to abide by the Award of Three Arbitrators, under a Penalty.*

Recital of disputes between several covenanting parties and two covenantees.

WHEREAS many disputes and differences are depending between [*covenantor*], of &c., and other the persons whose names and seals are hereunto set and subscribed, or some of them, on the one part; and [*covenantees*], of &c., or one of them, on the other part. And whereas as well the said [*covenantor*] and other the persons whose names and seals are hereto set and subscribed as aforesaid, as the said [*covenantees*], have submitted, and do hereby respectively submit the said disputes and differences to the award and determination of [*arbitrators*], of &c.; *So* as the said award be made in writing under the hands and seals of the said

Submission to the award of three arbitrators.

arbitrators, and ready to be delivered to the said parties, or their respective executors or administrators, on or before the ——day of —— next. NOW BE IT KNOWN, that the said [*covenantor*], and other the persons whose names and seals are hereto set and subscribed as aforesaid, do hereby severally, and for their respective heirs, executors, and administrators, covenant and agree with the said [*covenantees*] severally, their respective executors and administrators, that they the said covenanting parties, their heirs, executors, or administrators, will observe and perform and keep the award and determination of the said arbitrators concerning the premises to be made as aforesaid. And for the true performance of the said award on their part, the said [*covenantor*] and other the persons whose names and seals are hereto set and subscribed as aforesaid, do hereby severally and respectively bind themselves and their respective heirs, executors, and administrators, unto the said [*covenantees*] severally, and their respective heirs, executors, and administrators, in the penal sum of £——. (*Submission to be made a rule of court, ut ante, p.* 698). In witness &c.

13. COVENANT BY SEVERAL, UNDER A PENALTY.

Covenant severally to abide by award,

under a penalty.

14. ENLARGEMENT *of the Time for making an Award by the* Arbitrators.

14. ENLARGEMENT OF TIME BY ARBITRATORS.

We, the undersigned arbitrators, by virtue of the power to us given for this purpose, *do* hereby extend and enlarge, (*or*, further enlarge) the time for making our award until the —— day of —— next (*a*); on or before which day, our award in writing, of and concerning the matters within mentioned and referred to us, shall be made and published. Witness &c.

(*a*) If the time fixed be not the ultimate extended period limited by the submission, the remainder of the above form had better be omitted.

15. ENLARGEMENT OF TIME BY PARTIES.

15. ENLARGEMENT *of the Time for making an Award, by the* PARTIES *in Difference.*

KNOW ALL MEN BY THESE PRESENTS, *That* WE, the within named [*parties*], for ourselves severally and respectively, and for our several and respective heirs (*a*), executors, and administrators, *do* hereby give, grant, and allow unto the within named [*arbitrators*] further time for making their award of and concerning the several matters within referred to them, until the —— day of —— now next ensuing (*b*). IN WITNESS &c.

(*a*) *Vide ante*, p. 647.

(*b*) [In order to make the parties liable on their bonds for non-performance of an award made during the enlarged period, it has been recommended that there should be such an addition as the following, under the hands *and seals* of the parties, or that the parties should execute new bonds; but the precaution seems to be superfluous. *Vide ante*, p. 646.]

EXTENSION OF PENALTY TO ENLARGED PERIOD.

"AND we do hereby respectively for ourselves, and for our respective heirs, executors, and administrators, consent and agree, that the penalties mentioned in the several bonds entered into by us touching the matters in difference shall be extended to, and shall or may be recoverable against such of us the said parties respectively, and our respective heirs, executors, and administrators, as shall neglect or refuse to abide by and perform the award which shall be made by the said arbitrators, touching the matters in difference, during the enlarged time hereby given for making the same award, as full and effectually in all respects, as if the said enlarged time had been mentioned in the conditions of the said several bonds, instead of the time thereby limited."

16. Notice *to produce Papers, &c.* (*a*)

16. NOTICE TO PRODUCE PAPERS, &c.

In the Arbitration between [*obligor*] and [*obligee*].

I DO hereby give you notice to produce before [*arbitrators*], of &c., to whom all matters in difference between the above-named parties have been referred, to-morrow morning at eleven o'clock, at ——, all books, deeds, papers, writings, letters, vouchers, or other documents whatsoever, relating to the matters in difference between the said parties so referred as aforesaid, now in your custody, power, or possession, and especially a certain indenture, bearing date &c., and made &c., whereby the said &c. agreed to become co-partners in trade for the term of —— years. Dated &c.

[*attorney*],
Attorney for [*obligee*].

To Mr. [*obligor*], or Mr. [*attorney*], his attorney.

(*a*) [*Vide* stat. 3 & 4 Will. 4, c. 42, s. 40, *ante*, p. 641.]

17. Warrant of Attorney *to confess* Judgment.

17. WARRANT OF ATTORNEY TO CONFESS JUDGMENT.

Utility of warrant of attorney.

In some extraordinary cases it may be prudent to take a warrant of attorney to confess judgment for a specific sum, as a further security for the performance of an award, in order that execution may be immediately taken out, either against the property or the person of him who neglects or refuses to perform the award. See the Form, *ante*, p. 449; and see the difference between the effect of an attachment and a judgment, *infra*, tit. Award. The defeazance should contain the substance and effect of the bond or agreement, with a declaration that no execution should issue until non-performance of the award; and if it should be likely that the time appointed for performance of the award might be beyond a year from the time of entering up judgment, a proviso dispensing with the necessity of reviving the judgment may be inserted, *ut ante*, p. 267.

As to warrant

So when the dispute is concerning the title to lands, and it is pro-

17. WARRANT OF ATTORNEY TO CONFESS JUDGMENT.

of attorney to confess judgment in ejectment;

with a defeazance.

bable that the party in possession will be directed by the award to deliver the possession to the other party, it may be prudent to take a warrant of attorney to confess judgment in ejectment. For although a defendant be apprehended on an attachment for non-performance of an award, by not yielding possession of lands in pursuance of the award, yet if he continues obstinate, an ejectment is necessary to recover the possession. *Bayley* v. *Bayley*, before Park, J., Leicester Spring Assizes, 1823. *Vide Doe* d. *Greville* v. *Roper*, Harr. Woodf. Land. and Ten. 790, 4th Edit.: *Doe* d. *Morris* v. *Rosser*, 3 East, 65. The trouble, expense, and delay of that proceeding would be prevented by means of a WARRANT OF ATTORNEY TO CONFESS JUDGMENT IN EJECTMENT. For the Form of such a Warrant of Attorney by a mortgagor to a mortgagee, *vide post*, Vol. 6, see title WARRANT OF ATTORNEY. The defeazance should be, that no execution shall be taken out, unless the arbitrator should, by his award, direct the defendant to yield the possession, and he should neglect so to do on or before the day appointed by the award; and if the circumstances of the case seem likely to require it, there may be inserted a proviso dispensing with the necessity of reviving the judgment.

INDEX

TO THE

PRELIMINARY DISSERTATIONS AND THE NOTES.

AFFIDAVIT, jurat when several deponents, 458.
AGREEMENT. *See* ANNUITY, SALE.
ANNUITY, what is, 1. *See* RENT.
cannot be granted or released without deed, 2.
as to agreements to grant, 122.
no action for arrears on a mere agreement, 121.
habendum useless in grant of, 274.
election of remedy when charged both on person and estate, 2, 4.
when election cannot be, 2.
what amounts to an election, 4.
election, how determined, 4.
by prescription, 3.
how said to be personal, 5, 7.
remedy by writ of annuity, 4, 7.
granted by two persons, 6.
heirs, when bound, 6.
pour autre vie, devolution of, 9, 12.
personal, may be descendible, 12.
passes under a general bequest, 13.
entailed, 13.
liability of heir and executors to pay, 15.
whether donee of, may take the capital fund, 16.
remedies for;—writ of annuity, 16.
after determination of annuity, 22.
debt, when during the continuation of annuity, 16, 22.
against devisees, 23, n.
debt for rent-charge does not lie against a stranger to the land, 22.
debt by executors and administrators, 27.
covenant, 23.
covenant against devisees, 23.
covenant to pay annuities to two persons, whether several, 297.
securities for, *see* BOND, COVENANT, RECEIVER, WARRANT OF ATTORNEY.
as to security by bond and warrant of attorney, 457.
recovery of mesne profits, 224.
payment of consideration in bills undesirable, 225.
interest in such case, 225.
as to annexing trusts for investment to trusts for sale, 277.

ANNUITY—(*continued*).
practice as to copyhold securities, 202, 220.
interest on arrears, 63.
as to receivers, 68, *et seq.* *See* RECEIVER.
terms on which trustee ordered to give up possession, 49.
caution as to life insurance, 159.
proof of, and remedy for, in bankruptcy, 51, *et seq.*
liability of surety on bankruptcy of grantor, 52.
bankruptcy of surety, 53.
insolvency of grantor, 56.
effect of insolvency on surety, 57.
how released, 439.
release or re-conveyance of, by married women, 437.
grantor should have notice of sale of, 123.
as to terms of redemption, 174.
trust to repay consideration-money, whether usurious, 92, 295.
provisions of the Annuity Act, 79, *et seq.*
form of memorial, 81.
right of grantor to copies of deeds, 82.
return, &c., of consideration-money, 83, 96.
search in inrolment office, 84.
procuration-money, 84.
what annuities exempt from inrolment, 85, 106.
what to be inrolled, 89.
time of inrolment, 85.
when a party is abroad, 86.
contracts for, with minors, 84, 106.
contents of memorial, 86.
nature of instrument, 86.
names and description of witnesses, 87, 89.
duration of *cestui que vie*, 91.
consideration, and how paid, 91.
cancellation of prior deeds, 93.
nominal consideration, 94.
consideration paid by cheque, &c., 94.
what particulars to be inserted in memorial, 94.
directions as to memorial, 95.
certificate of inrolment, 95.
consideration—debt antecedently contracted, 96.
stating names of parties beneficially interested, 96.
retainer of part of consideration, 96, *et seq.*
as to paying the consideration-money to a third person to the use of the grantor, 270.
securities, when vacated, and on what terms, 110, *et seq.*
recovery of consideration-money, 113.
when annuity granted by feme coverte, 116.
proof that annuity was memorialised, 115.
agreement for, needs no memorial, 121.
assignment of, needs no memorial, 124.
as to entering satisfaction in inrolment office, 464.
as to registry in respect of Ireland and the colonies, 437.
APPOINTMENT. *See* POWER.
APPORTIONMENT of rent, 60.
what cases within the recent act, 60.

APPORTIONMENT—(*continued*).
of wife's separate maintenance, 61.
of rent on death of reversioner in fee, 365.
of rent on separation of leasehold premises, 628.
ARBITRATION, utility of references to, 632.
enforcement of agreement to refer, 632.
when arbitrators are named, 635.
agreement for, does not exclude jurisdiction of Courts, 632.
action for breach of agreement to refer, 633.
agreement to sell at a valuation, 636.
utility of a warrant of attorney, 701.
bond for, by several, should be joint and several, 639.
submission by rule of Court, 636.
reference when cause is depending—why taken after verdict, 636.
arbitrator cannot exceed the damages, 636.
submission of matters out of the cause, 637.
reference not a stay of preceedings, unless order so directs, 637.
subsequent proceedings when reference fails, 637.
setting award aside for misconduct of arbitrators, 637, 639, 640.
stat. 9 & 10 Will. 3, c. 15; agreement that submission shall be made a rule of Court, 638.
enforcement of award, 639.
what cases within the act, 639.
parol submission, 640.
submission may be made a rule of the Court of Chancery, 641.
submission can only be made a rule of one Court, 641.
stat. 3 & 4 Will. 4, c. 42, ss. 39, 40, 41, submission to be made a rule of Court not revocable, 641.
Court or Judge may enlarge time, 641.
attendance of witnesses, &c., may be enforced, 642.
witnesses' costs, 642.
arbitrators may administer an oath, 642.
criminal matters not within the act, 642.
nor courts of equity, 643.
consent that the *award* be made a rule of Court, 643.
amendment of orders of reference, 643, 648.
submission may be varied by parol, 643, 646.
remedy where submission under seal is varied by parol, 646, 647, 694.
variation of submission includes all the terms of former submission that are not varied, 643.
setting aside the order for reference, 648.
construction of agreement to refer—what matters included in, 648, 658.
joint and several submissions and awards, 649.
who may submit to arbitration, 652.
attornies and agents, 152, 654.
attornies may enlarge time, 653.
agent when bound personally, 655.
infant, 655.
guardian, 655.
feme coverte, 655.
direction in will as to, 656.
executors and administrators, 656.
reference by, when an admission of assets, 656.
assignees in bankruptcy, 658.

ARBITRATION—(*continued*).
general reference by assignees is an admission of assets, 660.
reference by assignees in insolvency, 660.
partners, 661.
of poor-rate appeal, 661.
sheriff cannot refer a cause, 636.
revocation of submission, 661.
where agreed to be made a rule of Court, 661.
death of arbitrator, 661, 679.
death of either party, 662.
marriage, 663.
bankruptcy or insolvency, 663.
where arbitrator delays making his award, 663.
revocation a breach of contract, 664.
umpire, when to be appointed, 664.
when to make his umpirage, 666, 668.
effect of appointment on arbitrator's authority, 668, 669.
distinguished from a *third arbitrator*, 664.
effect of arbitrators joining with umpire in award, 669.
umpire may decide an arbitrator's report of facts, 669.
whether, if umpire refuses to act, arbitrators can appoint another, 669.
how to be chosen;—choice by lot, 670.
the whole case must be referred to umpire, 672.
appointment of, needs no stamp, 680.
ASSETS, land in the colonies, 400.
estate *pour autre vie*, 9.
ATTORNEY, power of, to assent to an appointment, 471.
ATTORNMENT, when requisite, 24.
ASSIGNMENT. *See* ANNUITY, SALE.
AUTRE VIE, devolution of estates *pour*, 9.
devolution of rents granted *pour*, 9.
whether estate *pour*, passes entirely, without words of limitation, 14.
as to estate *pour*, in copyholds, 201.
AWARD. *See* ARBITRATION.

BANKRUPTCY, effect of, on powers, 467.
power of assignees to submit to arbitration, 658.
proof of, and remedy for annuity, 51, *et seq.*
liability of surety for annuity, 52.
bankruptcy of surety for annuity, 53.
as to colonial property, 436.
BARGAIN AND SALE FOR A YEAR unnecessary in Ireland, and now in England, 153.
profert of, unnecessary in pleading, 153.
required, in what colonies, 406.
BOND, as to execution and copy of, when it contains mutual agreements, 178.
defeazance may be varied by deed, 646.

CLERGYMEN, securities by, 459.
COLONIES, constitution of, 398, 407.
as to the laws prevalent in the different colonies, 398, 400, 407.
what English laws have force in, 399, 407.
real estate in, are assets, 400, 408.
as to execution and registry of deeds relating to, 397.

COLONIES (*continued*).
power of attorney to acknowledge deed in, 397.
lease for a year required, where, 406.
law of occupancy of estates *pour autre vie*, 379.
rights of assignees of bankrupts in respect of property in, 436.
union of offices of counsel and solicitor in, 380.
laws of the *Leeward Islands*, 407, *et seq.*
plantation utensils, and beasts, are freehold, 408, 409.
law of dower and descent, 408.
substitute for fine and recovery, 409.
Antigua, laws of, relating to real property, 401, *et seq.* 411, *et seq.*
execution of deeds relating to land in, 401, *et seq.* 411, 416.
conveyances in lieu of fine and recovery, 403, 411, 419.
law of limitations, 401.
wills, 405.
livery and seisin unnecessary, 406.
enactments borrowed from the Statute of Frauds, as to parol contracts, wills, judgments, &c., 413.
Bahamas, laws of, 429.
Barbadoes, laws of, 424, *et seq.*
Bermudas, laws of, 429.
Dominica, laws of, 426.
Grenada, laws of, 427.
Jamaica, laws of, 420 *et seq.*
substitute for fine and recovery, 420, 423.
Montserrat, laws of, 430.
Nevis, laws of, 431.
New Brunswick, laws of, 434.
Newfoundland, laws of, 435.
Nova Scotia, laws of, 433.
Prince Edward's Island, laws of, 435.
St. Christopher's, laws of, 431.
St. Vincent, laws of, 428.
Tobago, laws of, 430.
Trinidad, laws of, 426.
Upper Canada, laws of, 432.
CONDITION, as to copyholds, 220, *et seq.* *See* COPYHOLDS.
conveyance by wife in pursuance of, 469.
precedent consent to an appointment, 500.
CONSIDERATION, as to stating the currency in which paid, 379.
CONVEYANCE. *See* DEED, POWER.
when instrument operates under the ownership, and when as an appointment, 490, *et seq.*
COPYHOLDS, power of copyholder to fell timber, 360.
mode of executing appointments and devises of, 488, 495.
as to inserting trusts in the surrender, 446.
surrenderor is tenant until surrenderee's admittance, 220.
devise by surrenderee, heir, &c., before admittance, 220.
surrenderee may assign in equity before admittance, 221.
whether lord must admit surrenderee's assignee, 222.
lord cannot compel admittance upon a covenant to surrender, 223.
nor, generally, of a surrenderee, 223.
surrenderor on condition may re-enter on performance of condition, 223.

COPYHOLDS (*continued*).
but after condition broken he must be re-admitted, and the descent is changed, 223.
surrenderor on condition may release condition to surrenderee by deed, 224.
unadmitted surrenderee cannot recover in ejectment, 224.
action for mesne profits by surrenderee after admittance, 224.
as to estates *pour autre vie* in, and occupancy of, 201.
practice as to copyhold securities for annuities, &c., 201, 220, 446.
prudence of taking a surrender, 220.
condition and trusts should be inserted in the court-rolls, 220.
power of distress over, 46.
power over, should require inrolment of appointment, 518.
warrant to vacate conditional surrender, 463.
appointment and authority of steward, 611. *See* STEWARD.
who may take surrenders, 611.
right to inspect rolls, 613.
CORPORATION, successors bound, though not named, 7.
COVENANT to pay annuities to two persons, whether several, 297.
for title—use of the word *that* in the covenant for acquittal, 264.
action of, for annuity, 23.
CROWN, remedy for rent out of incorporeal hereditaments, 4.
grant by, binds successors, 7.

DEBT, action of, for annuity, 16.
for rent-charge does not lie against a stranger to the land, 22.
action of, against devisees, 23.
DEED. *See* POWER.
instrument sealed, but not delivered, is not, and needs no stamp, 563, 680.
execution of, when complete, 471, *et seq.*
what held to be, in execution of a power, 488.
necessity of signature to, 481.
signature by mark, &c. 487.
stamp held equivalent to a seal, 487.
attestation of, 481.
as to *habendum* in grant of annuity, 274.
habendum informal in surrender or release of right, 170.
operates according to the intention, 491.
form of conveyance to a releasee to uses, 244.
cancellation of, does not divest an estate, 285.
cancellation of bond or deed of covenant, 285.
effect of misreciting date of lease, &c., 288.
right to custody of, 375.
as to execution of colonial deeds, *see* COLONIES.
DEFEAZANCE. *See* WARRANT OF ATTORNEY.
DESCENT of copyholds changed after condition broken, 223.
when turned by an appointment by owner of the fee, 490.
DISTRESS for rent-seck, 39. *See* RENT.
for rent of a chattel, 40.
power of, when and how given, 43, 44.
as to previous demand, 45.
by executors, 27, 45.

DISTRESS (*continued*).
on copyholds, 41.
for a rent, seisin requisite to; attornment, 24.
by a receiver, 75, 77.
for rent, against whom, 30, *et seq.*
on goods of stranger, 32.
on goods in the possession of the law, 32.
by lord of ancient seignory, for services, 33.
for rent granted by a coparcener, 35.
none against tenant by title paramount, 36.
against wife for rent out of her term of years, 36.
none for arrears of rent-charge after assignment, 37.
grantee of rent may distrain though distress limited to a stranger, 38.
DOWER of a wife of a trustee or mortgagee, 470.

EJECTMENT by and against receivers, 78.
action for mesne profits by mortgagees, &c., 224.
ENROLMENT. *See* ANNUITY, INROLMENT.
ENTRY, powers of entry by way of use, 46.
powers of, at common law, 47.
as to waste under power of, 48.
as to copyholds, 49.
terms on which trustee ordered to give up possession, 49. *See* RECEIVER.
ESCHEAT of rent, 62.
ESQUIRE, who are esquires, 553.
attornies so called in some colonies, 330.
ESTATE, cannot be divested by cancelling deed, 285.
ESTATE TAIL in a personal annuity, 13.
EXECUTORS AND ADMINISTRATORS, assent to bequest of rent, 42, 45.
action for debt and for rent by, 27, 29.
distress by, 27, 29, 45.
submission to arbitration by, 656.
FINE of land in the colonies, 403. *See* COLONIES.
FISHERY, grant of a several fishery does not pass the soil, 555.
right of owner of, against trespassers, 551.
who have right of fishing, 555.

GAME, present state of the law respecting, 547, *et seq.*
what is, 550.
who entitled to, and who may kill, 548.
GAMEKEEPER, appointment and powers of, 548, *et seq.*
appointment of, by trustee, 650.
GUARDIAN, in socage, 559.
powers of, 565, 567, 569.
by nurture, 560.
by nature, 560.
by the father's appointment, 561.
by will of infant, 561.
when infant marries, 561.
by election, 562, *et seq.* 571.
does not exclude jurisdiction of the Court, 562, 569.

GUARDIAN (*continued*).
by appointment of the Chancellor, 569.
removal of, 569.
by appointment of Ecclesiastical Court, 570.
ad litem, 570.
of an illegitimate child, 570.
de son tort, 571.
office not transferrable or transmissible, 564.
survivorship of office, 564, 572.
leases by, 565.
payment of legacy to, 566.
maintenance of infant, 566.
consent to marriage, 568.

HABENDUM. *See* DEED.
HEIR, when bound by grant of annuity, 6.
HEREDITAMENTS, whether leaseholds are properly described as, 235.

INFANT, power of, over his property, 562, *et seq.*
exercise of a power by, 470.
submission to arbitration by, 655.
contract for grant of annuity by, 84, 106.
guardianship of, 559, *et seq.* *See* GUARDIAN.
payment of legacy, and maintenance to guardian, &c., 566.
legacies of, how to be dealt with, 567.
consent to marriage of, 568.
leases by guardians, 565.
INROLMENT. *See* ANNUITY.
time for inrolling recognizance, 476.
INSOLVENT, power of assignees to submit to arbitration, 660.
grantor of annuity, 56.
effect of insolvency on surety, 57.
INSURANCE, LIFE, practice of offices as to purchasing policy, 159.
INTEREST on arrears of rent, &c., 63.
on judgments, debts, &c., 55, 66.

JOINT TENANT, remedy for rent granted by, 34.
JOINTURE, mode of exercising power, 505.
trust estate good in equity, 506.
JUDGMENT, agreement to dispense with *fieri facias*, 454, 455.
priority of judgment debt, 306.
grantor of annuity has a right to have satisfaction acknowledged, 463.

LANDLORD AND TENANT, mesne profits recoverable by mortgagee, &c., 224.
LEASE FOR A YEAR. *See* BARGAIN AND SALE.
LEASEHOLDS, whether properly described as *Hereditaments*, 235.
apportionment of rent on sale of, in parcels, 628.
LIEN of a solicitor who is steward of a manor, 612.
LIMITATION of remedy for annuities and rent, 58.

MANOR. *See* COPYHOLDS, STEWARD.
rights of lord of, in respect to game and gamekeepers, 548, *et seq.*

MANOR (*continued*).
when extinct, 551.
what rights remain after extinction of, 552.

MARRIAGE of infant, consent requisite to, 568.
by license without consent, valid, 569.
consent to marriage of illegitimate child, 570.

MAXIM. *Garanty ne point amender un estate*, 7.

MESNE PROFITS recoverable by mortgagee, &c., 224.

MONEY, as to stating the currency, 379.

MORTGAGEE cannot be receiver with a salary, 69, 72.
when entitled to appoint receiver, 73, 75.

MORTMAIN, Statute of, not applicable to the colonies, 400.

PARTITION, nature of rent granted for equality of, 3.

PLEADING assurances under the Statute of Uses, 153.

POWER; a power may be created by appointment, 526.
what powers may be executed by married women, 467, *et seq.*
distinction between powers simply collateral and appendant, 468.
agreement before marriage, 468.
given to infant, 470.
mode of framing appointments, 470, *et seq.*
power must be strictly followed, 471.
inrolment, 471.
a trustee whose consent is requisite cannot consent by anticipation, 471.
execution by two instruments taken together, 472.
must be completed in the lifetime of all parties, 473.
revocation, when complete, 477.
signature before witnesses, 477.
attestation, 478, *et seq.*
whether attestation may be subscribed at a different time from execution, 479.
as to supplying defects in execution, 479.
Mr. Preston's Act, 481.
execution of power by will, 484.
will appointing personalty must be proved, 627.
stamp held equivalent to a seal, 487.
sufficient to observe solemnities prescribed, 487.
attestation of will appointing real estate, 487.
copyholds, 488, 495.
nature of the instrument, deed, or will, 488.
revocation of testamentary appointment by marriage, 489.
when instrument operates under the ownership, 490, *et seq.*
as to turning the descent, 490.
when power of revocation and new appointment may be reserved, 495, 497.
the donee may regulate the form of revocation; not of new appointment, 495.
appointment, when revocable, 496.
to revoke implies power to appoint new uses, when, 496.
donee not bound to reserve power of revocation, 497.
time when power may be executed, 498.

POWER (*continued*).
power to be exercised on a contingency, 498.
contingency as to the person, 499.
consent *after* appointment, whether good, 500.
power of a selection among a class, 500, *et seq.*
exclusive and illusory appointments, 500, *et seq.*, 526.
to jointure, mode of exercising, 505.
what estate may be limited, 515.
over copyholds, should require appointment to be inrolled, 518.
appointment not completed does not prevent another appointment, 520.
extinction of, 477.
PRESCRIPTION, annuity by, 3.
PROTECTOR of settlement, appointment of, 626.

RECEIVER, powers and duties of, 68, *et seq.*
when appointed, 75.
who may be, 69.
how best appointed, 76, 363, 364, 574, 576, 592, 600.
should be authorized to appoint a deputy, 597.
mortgagee cannot be with a salary, 69, 72.
salary of, 70, 578.
when mortgagee may appoint, 73, 75.
not entitled to per centage on money not passing through his hands, 73.
who answerable for, 74, 75.
as to passing accounts of, 74.
as to arrears due at his appointment, 75.
distress by, 75, 77, 364.
should give notice to tenants, 579.
may make what expenditure, 77.
ejectment by and against, 78.
liability of, for losses, 78.
cannot delegate his powers of control, 79.
to secure annuity, times on which trustee ordered to give up possession, 49.
RECITAL should not generally state legal results of facts, 372.
of a will, 372.
effect of error in reciting lease, &c. 288.
RECOGNIZANCE, time for inrolling, 476.
RECOVERY of land in the colonies, 403. *See* COLONIES.
RELEASE of rent, 59.
of *actions*, effect of, 59.
of annuity how made, 439.
of annuity must be by deed, 2.
of condition by surrenderor of copyholds, 224.
RENT, rent-charge, and rent-seck, 2.
rent-service, what is, 27.
when an annuity, 2.
as to creation of, by way of use, 7.
granted out of an incorporeal hereditament, 3.
remedy by prerogative for, 4.
granted without charging the person, 5.
out of land in two counties, 5.
pour autre vie, devolution of, 9, 13.
seisin of, 24.
attornment, 24.

RENT (*continued*).
seisin of rent by way of use, 25.
distress for, without attornment, 24.
remedy for, by executors and administrators, 27, 29.
remedy for rents-seck since the stat. *quia emptores*, 39.
remedy for rent charged on a chattel, 40.
rent out of one parcel of land and distress on another, 41.
distress by devisee, 42.
assent to bequest of a rent, 42.
power of distress, and how given, 43, 44.
ill-reserved at law, good in equity, 44.
powers of entry to secure, 46.
as to copyholds, 40.
remedy of husband for arrears of wife's rent, 28.
remedy for, after death of *cestui que vie*, 28.
as to the remedy by distress, 30.
against whom available, 30, *et seq.*
against one of several tenants, 32.
concurrent remedies, 30.
remedy for arrears after recovery of mesne arrears, 31.
remedy for rent granted by joint tenant, 34.
granted by coparcener, distress for, 35.
granted by husband out of wife's term, no distress for, against wife surviving, 36.
how best charged on wife's term, 37.
remedy for arrears after assignment, 37.
grantee may distrain, though distress limited to a stranger, 38.
Statute of Limitations, 58.
release of, 59.
extinction and apportionment of, 60.
sale directed by equity to raise arrears, 49.
value raisable by sale in bankruptcy, 51.
escheat of, 62.
interest on arrears of, 63.
apportionment of, on death of reversioner in fee, 365.

SALE, agreement to sell at a valuation, 686.
inconvenience attending agreements for, 122.
of annuity, notice should be given to grantor, 123.

SCIRE FACIAS to revive judgment, 454, 455.

STAMP, appointment of umpire needs none, 680.
arbitration bond with agreement as to paying costs needs no additional stamp, 683.
stamping after execution, 462.
old deed stamped with modern stamp is admissible, 462.
instrument under seal, but not delivered, requires none, 563, 680.
on annuity deeds, 448.
when several instruments, 449, 451.
on appointment, 514.
on deed appointing a guardian, 563.
appointment of gamekeeper, 556.
on appointment of steward, 613.
on release or reconveyance of annuity, 442.

STAMP (*continued*).
warrant of attorney. 451.
defeazance to warrant, 456.

STATUTES.
3 Edw. 1, c. 1, fisheries, 551.
Westminster, 13 Edw. 1, c. 45, judgment, 455.
27 Hen. 8, c. 10, s. 4, uses, rents, 25.
32 Hen. 8, c. 2, s. 4, limitations, 24.
32 Hen. 8, c. 37, recovery of rents, 27.
29 Car. 2, c. 3, frauds, 481.
s. 12, *autre vie*, 9.
3 & 4 Will. & M. c. 14, fraudulent devises, 23.
8 & 9 Will. 3, c. 11, s. 8, judgment, 455.
9 & 10 Will. 3, c. 15, arbitration, 638.
4 Anne, c. 16, attornment, 24.
4 Geo. 2, c. 28, s. 5, distress for rent, 39.
5 Geo. 2, c. 7, s. 4, real assets in the colonies, 400, 408.
9 Geo. 2, c. 36, mortmain, 399.
c. 5, s, 6, (I.) lease and release, 153.
11 Geo. 2, c. 19, apportionment, 366.
14 Geo. 2, c. 20, s. 9, *autre vie*, 9.
25 Geo. 2, c. 6, witnesses to wills, colonies, 400.
1 Geo. 3, c. 3, (I.) lease and release, 153.
17 Geo. 3, c. 26, annuity, 79.
53 Geo. 3, c. 141, annuity, 79, *et seq.*
54 Geo. 3, c. 168, attestation of appointments, 481.
55 Geo. 3, c. 184, s. 21, stamp; reconveyance of annuity, 442.
Schedule, annuity deed, 448.
3 Geo. 4, c. 92, annuity, 87.
6 Geo. 4, c. 16, s. 54, annuity, 51, 52.
s. 64, bankrupt's colonial property, 436.
7 Geo. 4, c. 75, annuity, 90.
11 Geo. 4 & 1 Will. 4, c. 47, s. 3, fraudulent devises, 23.
c. 60, infant trustees, &c., 399.
1 & 2 Will. 4, c. 32, game, 547.
c. 56, ss. 26, 27, bankrupt's colonial property, 436.
3 & 4 Will. 4, c. 27, ss. 2 & 42, rent, 59.
c. 42, s. 3, limitations, actions on specialties, 59.
s. 28, interest, 66.
ss. 39, 40, 41, arbitration, 641.
c. 74. ss. 32, 33, protector, 626.
4 & 5 Will. 4, c. 22, apportionment, 60, 366.
7 Will. 4 & 1 Vict. c. 26, s. 6, *autre vie*, 10.
s. 7, testamentary guardians, 561.
s. 10, appointment by will, 484.
s. 18, revocation of appointment, 489.
1 & 2 Vict. c. 110, s. 8, insolvency, annuity, 57.
2 & 3 Vict. c. 37, usury, 226.
3 & 4 Vict. c. 83, usury, 226.
4 Vict. c. 21, lease and release, 153.

STEWARD of a manor, how appointed, 611.
of the Queen, or of a corporation aggregate, 611.
of a court leet cannot be appointed for years, 612.

STEWARD—(*continued*).
discharged, remedy to recover court-rolls, &c., from, 612.
lien of a solicitor who is, 612.
appointment and authority of deputy steward, 615.
SURETY for annuity, liability of, on bankruptcy, 52.
bankruptcy of, 53.
as to insolvency, 57.

TIMBER, what words give termor for securing annuity an interest in, 342.
copyholder's power to fell, 360.
TRUSTEE cannot delegate his discretion, 471.
when appointed receiver, 69.
duty of, respecting game, 550.
of leaseholds, entitled to indemnity, 298.

USE, creation of rent by way of, 7.
powers of entry by way of, 46.
as to pleading assurances by way of, 153.
USURY, where return of consideration for annuity is secured, 92, 295.
interest on bills given in consideration of an annuity charged on land, 226.

WARRANT OF ATTORNEY, defeazance must be annexed to, 451, 462.
agreement to dispense with *scire facias*, 454, 455.
as to bond to accompany, 457.
by clergyman, 459.
to acknowledge satisfaction, 463.
on reference to arbitration, 701.
WIFE, submission to arbitration by, 655.
as to securities on her copyholds, 229.
release or conveyance of annuity by, 437.
conveyance of estate vested in a wife as a trustee, 469.
execution of powers by, 467. *See* POWER.
apportionment of her separate maintenance, 61.
not bound to return consideration for annuity charged on her separate estate on vacating the securities, 116.
liability of her separate estate for her debts and contracts, 117.
as to securities on her reversionary property, 308.
remedy of husband for arrears of her rent, 28.
WILL, devise of copyholds by heir, &c., before admittance, 220.
infant cannot appoint guardian by, 561.
execution of appointments by, 484, *et seq.*
what is a publication, 485.
devise of estate *pour autre vie* held not to pass the entire interest, 14.
personal annuity passes under a general bequest, 13.
appointing personalty must be proved, 627.